

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION

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UNITED STATES OF AMERICA, )  
 )  
Government, ) Case No. 18-CR-129  
 )  
 )  
vs. )  
 )  
IONEL MURESANU, ) September 11, 2018  
 )  
Defendant. )  
-----

**VOLUME II OF II**

**TRANSCRIPT OF JURY TRIAL**

BEFORE THE HONORABLE J.P. STADTMUELLER

UNITED STATES DISTRICT JUDGE

Official Court Reporter:  
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18 Ionel Muresanu, defendant, present in person.

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1 (Jury not present.)

2 THE CLERK: The Court calls *United States vs.*  
3 *Ionel Muresanu*, Case No. 18-CR-129, for a jury trial.

4 May I have appearances beginning with the  
5 Government, please?

6 MS. MORENO-TAXMAN: Karine Moreno-Taxman and Carol  
7 Kraft on behalf of the United States. Also present at the  
8 table is United States Secret Service Agent Zachary  
9 Hoalcraft and Michelle Pribyl as well, our legal assistant.

10 MR. ULLER: Good morning, Judge. Mr. Muresanu  
11 appears with Joshua Uller.

12 THE COURT: Thank you. Good morning, Counsel, and  
13 good morning to our agent, and good morning to you,  
14 Mr. Muresanu.

15 Before the jury comes in, since my staff wants to  
16 get these jury instructions formed, edited, and prepared,  
17 are there any requests that we haven't addressed with regard  
18 to jury instructions?

19 MS. KRAFT: I don't think we do, Judge. I  
20 reviewed them. They're fine with me.

21 Ms. Moreno-Taxman hasn't had a chance to really  
22 look at them in any detail, but at this point, I would say  
23 we don't think that we're going have any additional requests  
24 or any objection to what's in the pattern.

25 THE COURT: Mr. Uller?

1 MR. ULLER: No, Your Honor.

2 THE COURT: All right.

3 MR. ULLER: In my view, I didn't see anything.

4 There was one other matter I wanted to address  
5 before the jury came in.

6 THE COURT: Certainly.

7 MR. ULLER: There was an agreement between the  
8 parties that the Government would not introduce any evidence  
9 and avoid any reference to Mr. Muresanu's immigration  
10 status, the time he's been in the country, things of that  
11 nature. And the final exhibit that was introduced yesterday  
12 afternoon, 12B1 and 12B, the statement included  
13 Mr. Muresanu's -- I guess a statement about having only been  
14 in the country for two years.

15 I'm not asking for anything substantial other than  
16 an indication from the Government as to whether there is any  
17 other additional evidence like that, and if there is, I  
18 would ask that it be excluded.

19 MS. MORENO-TAXMAN: Your Honor, first of all,  
20 there was no agreement reached about -- we decided to take  
21 out those references, but the Court never ruled on them, and  
22 that reference of the fact that he just was in the country  
23 for less than a year, the Court has repeatedly told this  
24 jury that he is a resident of California. There is nothing  
25 in those statements that come close to going into his

1       immigration status or the fact that he's here illegally. So  
2 I think just for the record's sake, that is not a valid  
3 claim and that there was no agreement.

4                  Thank you, Your Honor.

5                  THE COURT: All right. Well, the comment in  
6 Mr. Muresanu's statement is at best antiseptic. There's  
7 nothing to suggest that he was not born here. He may have  
8 legally immigrated to the United States. There's nothing to  
9 suggest that he's here illegally insofar as the jury is  
10 concerned.

11                 MS. KRAFT: Just one more housekeeping matter,  
12 Your Honor. We conferred with your clerk. It appears that  
13 I neglected to move in Exhibit Nos. 3A and 3B. Those are  
14 the cards that were recovered from Florin and the photograph  
15 of the cards. Detective Artus testified about them  
16 yesterday. I published them. So I would move to have them  
17 admitted into the record at this point in time.

18                 THE COURT: All right. The Court will receive  
19 Exhibits 3A and 3B.

20                 MS. KRAFT: Then there is Exhibit No. 12A1, which  
21 is the transcript of a recording that we've already heard  
22 that Detective Hinke testified about when she was on the  
23 stand. We would also move that into evidence.

24                 THE COURT: All right. The Court will receive  
25 Exhibit 12A1.

1 MS. KRAFT: Thank you.

2 THE COURT: Are there any other witnesses other  
3 than Mr. Hoalcraft?

4 MS. MORENO-TAXMAN: No, Your Honor, not on behalf  
5 of the United States.

6 THE COURT: All right. Very well.

7 Mr. Hoalcraft, you may resume the witness stand.

8 And, Mr. Shepherd, you may bring the jury in.

9 MR. ULLER: Judge, just briefly. In reviewing,  
10 again, instructions, I didn't see an expert witness  
11 instruction, and the Government has indicated -- just  
12 provided Exhibit 27, which is their notice of expert  
13 testimony.

14 MS. MORENO-TAXMAN: Exhibit 27?

15 MR. ULLER: Exhibit 27 is the -- well, you didn't  
16 give it to me. You said I already had it.

17 MS. MORENO-TAXMAN: Judge, our position was that  
18 he was never an expert. I did not give a notice of expert  
19 at this time. A notice of expert was given way earlier  
20 before the final pretrial, and there was no objection made  
21 during any of the testimony of any of the witnesses.

22 THE COURT: There is reference in the jury  
23 instructions to expert.

24 MS. MORENO-TAXMAN: Okay.

25 MR. ULLER: Okay. I have to take a closer look,

1       Judge. I apologize.

2                   MS. KRAFT: I saw a reference that there was some  
3 expert testimony, I thought.

4                   On page 8 of 20: "An exception to the rule exists  
5 as to those whom we call "expert witnesses." Witnesses who,  
6 by education and experience, have become expert in some art,  
7 science, profession, or calling."

8                   MR. ULLER: Thank you.

9                   MS. KRAFT: Et cetera.

10                  MR. ULLER: I thought I had seen it.

11                  THE COURT: Essentially, the instructions that are  
12 before you are the parties' agreed upon. They've been  
13 formatted. They have been readjusted in terms of sequence,  
14 but what the parties requested is what you have. So we  
15 haven't taken anything away or added.

16                  Mr. Shepherd, you may invite the jurors in.

17                  (Jury present.)

18                  THE COURT: Good morning, members of the jury.

19                  We're ready to proceed with the balance of Agent Hoalcraft's  
20 testimony.

21                  Agent Hoalcraft, you may assume your same oath  
22 that you took yesterday when you began your testimony.

23                  Ms. Moreno-Taxman, you may continue.

24                  MS. MORENO-TAXMAN: Thank you.

25

1                   ZACHARY HOALCRAFT, WITNESS, PREVIOUSLY SWORN

2                   DIRECT EXAMINATION (continued)

3 BY MS. MORENO-TAXMAN:

4 Q       Good morning, Agent Hoalcraft.

5 A       Good morning, ma'am.

6 Q       You were here in court yesterday during the  
7 testimony of Detective Artus?

8 A       I was.

9 Q       And Detective Artus identified some photocopies as  
10 the receipts that were found on Florin; is that correct?

11 A       Yes.

12 Q       And since that time, have you looked at Exhibit  
13 3C1 and 3C and compare them to see if the two are the same  
14 copies of the original?

15 A       I have.

16 MS. MORENO-TAXMAN: Your Honor, I would move in  
17 3C1 at this time.

18 THE COURT: All right. The Court will receive  
19 Exhibit 3C1.

20 MS. MORENO-TAXMAN: Thank you.

21 BY MS. MORENO-TAXMAN:

22 Q       At this time, can we go back to where we were on  
23 the statement?

24 When we left yesterday, we had taken -- you leave  
25 the room, correct? And we saw the defendant sit down, and

1 you gave him some papers, right? Some paper to look at and  
2 fill out for his statement; is that correct?

3 A Yes.

4 Q I'm going to show you now what's been marked  
5 Exhibit 11. Can you please identify that for us?

6 A This is the defendant's written statement.

7 MS. MORENO-TAXMAN: Your Honor, I would move into  
8 evidence Exhibit 11.

9 THE COURT: All right. The Court will receive  
10 Exhibit 11.

11 MS. MORENO-TAXMAN: Your Honor, I also ask for  
12 permission to publish it to the jury.

13 THE COURT: You may.

14 MS. MORENO-TAXMAN: Thank you, Your Honor.

15 BY MS. MORENO-TAXMAN:

16 Q So as we discussed when we left yesterday, you had  
17 filled out the form that we see -- or given him the form  
18 that we see in the video; is that correct? And then he was  
19 left alone and given a chance to write; is that correct?

20 A Yes.

21 Q Okay. After a period of time, what happened? So  
22 we're watching him write, correct?

23 A Yes.

24 Q Okay. So can we just -- yeah.

25 (Video played to the jury.)

1 BY MS. MORENO-TAXMAN:

2 Q And about how much time did you give him outside?  
3 A I don't recall exactly how much, but it was  
4 approximately 20, 30 minutes.

5 Q Okay. And then did you return back in the room?

6 A Eventually, yes.

7 Q Okay. Could you please play for us -- you've  
8 reviewed Exhibit 12C; is that correct? That's the  
9 transcript of -- the partial transcript of when you went  
10 back into the room?

11 A I have.

12 MS. MORENO-TAXMAN: So, Your Honor, at this time,  
13 I would move in evidence 12C and 12C1.

14 THE COURT: All right. The Court will receive  
15 Exhibits 12C and 12C1.

16 MS. MORENO-TAXMAN: Can you please play it for us?  
17 (Video played to the jury.)

18 BY MS. MORENO-TAXMAN:

19 Q Can you just stop it a second?

20 Okay. Your supervisor is back in the room talking  
21 to the defendant; is that right?

22 A That is.

23 Q And if we look at that form, we can see there's  
24 handwriting on there?

25 A Yes.

1 Q And that was his handwriting; is that correct?

2 A That was.

3 Q Okay.

4 Can we please continue?

5 (Video played to the jury.)

6 BY MS. MORENO-TAXMAN:

7 Q So that signature on the bottom of the card of  
8 this statement, who wrote that signature?

9 A The defendant wrote his own signature.

10 Q Okay. And what about your signature?

11 A I wrote my signature.

12 Q And what's the other signature on this?

13 A The other signature is my supervisor, Kerry Dyer.

14 Q Could you just please put up Exhibit 11? Could  
15 you just go to the last page, please?

16 Is that the signatures you were talking about?

17 A Yes, they are.

18 Q And then can we go back to the first page, please?

19 There are some corrections with initials on those  
20 in that first page. Can you explain just what that is?

21 A Yes. So if the defendant needed to cross  
22 something out, he would have to write his initials over it  
23 to say that he crossed them out.

24 Q So all those cross-outs were his?

25 A Yes.

1 Q Did you write any of this other than your  
2 signature?

3 A I did not.

4 Q Thank you.

5 So as part of your investigation, now that you had  
6 these hundred cards, what was the next step that you did?

7 A After we took possession of the cards, we brought  
8 them to Detective Milotzky at Wawatosa to read the magnetic  
9 strip back.

10 Q Okay. And that is Exhibit 25; is that correct?

11 A I believe so. I don't have it in front of me.

12 MS. MORENO-TAXMAN: Your Honor, I'm going to ask  
13 to publish Exhibit 25 to the jury.

14 BY MS. MORENO-TAXMAN:

15 Q So now what I would like to do, really, is to get  
16 to the nitty-gritty of what the Secret Service does to  
17 figure out whose magnetic strip is encoded in that card and  
18 that they're real people; is that right?

19 A Uh-huh.

20 Q So step one was having the detective from Wawatosa  
21 run the strips, right, to see where they came from?

22 A Yes.

23 Q Okay. And in addition to him running it, did you,  
24 yourself, witness him doing that?

25 A I did.

1 Q And that was after he created this report; is that  
2 correct?

3 A It was.

4 Q And did you verify with your own eyes that  
5 everything on this report was correct?

6 A Yes.

7 Q And about how long did that process take?

8 A The process takes about three hours, four hours  
9 for the number of cards.

10 Q Okay. And if you had not used the software that  
11 he had, could this report have been generated?

12 A It could've been.

13 Q Okay. And you, yourself, have used a handheld  
14 magnetic strip reader?

15 A I have.

16 Q And how long would you estimate it would take to  
17 do 100 cards?

18 A It would probably take several days.

19 Q Okay. And you saw him put it through the magnetic  
20 strip and see the number come up; is that right?

21 A I did.

22 Q Do you have a highlighter next to you?

23 So on the first page of this exhibit, if we go up  
24 to the sixth up.

25 A Sixth from the bottom?

1           Q     Yes, please. I'm going to show you now what has  
2 already been admitted into evidence, which is the vanilla  
3 card recovered from the defendant with the numbers ending  
4 4793. Can you use the pointer and show us where the  
5 detective manually entered that information?

6           A     It's right here (indicating).

7           Q     Okay. Can you do it in the big one? That would  
8 help us.

9           A     Here (indicating).

10          Q     So there it is.

11                 So right now all we see there is that a card that  
12 claims to be a Bankcorp card with the 4793 numbers was what  
13 was on the front of the card?

14          A     Yes.

15          Q     And that it claims to be a prepaid Visa card,  
16 right?

17          A     Yes.

18          Q     Okay. Now, if you go down further, what did the  
19 magnetic strip show for that particular card?

20          A     The magnetic strip showed the last four ending in  
21 8856.

22          Q     If we could show you -- and you've highlighted  
23 that line?

24          A     I have.

25          Q     Thank you.

1 A Those four.

2 Q So 8856 was the actual account; is that correct?

3 A Uh-huh.

4 Q And what bank was it from?

5 A That was from JP Morgan Chase.

6 Q If we look on a little bit --

7 MR. ULLER: Objection, Your Honor. This is  
8 cumulative. We went through this with the last witness.

9 THE COURT: Yeah.

10 I'm not sure, Ms. Moreno-Taxman, unless we're all  
11 missing something, what the importance of this is at this  
12 juncture.

13 MS. MORENO-TAXMAN: All right.

14 BY MS. MORENO-TAXMAN:

15 Q Could you, please -- also looking at page 2, could  
16 you highlight the 17<sup>th</sup> card down, the one that ends in 4424?

17 And then, finally, on the third page, the bottom  
18 one which ends in 6370, are those the accounts that you  
19 ultimately figured out belonged to the victims who  
20 testified -- the alleged victims who testified here?

21 A Yeah, I believe so.

22 Q Okay. And can I show you the other cards that end  
23 in 4424 and 6370? Were those the vanilla gift cards that  
24 had the information encoded for the three victims?

25 A Yes, they are.

1 Q Okay. Now, at this point, though, you still don't  
2 know who the victims are; is that correct?

3 A Correct.

4 Q So all you know is that there's 100 counterfeit  
5 access devices and no idea whose accounts they are, right?

6 A Correct.

7 Q So what's the next step that you do?

8 A The banks are subpoenaed for the account holder  
9 information at which point they return the bank records.

10 MS. MORENO-TAXMAN: Your Honor, I had given notice  
11 pursuant to Rule of Evidence 902(11), that will include all  
12 of the different banks that were subpoenaed. I have now  
13 marked that as Exhibit 27 and ask to be able to move it into  
14 evidence.

15 THE COURT: All right. The Court will receive  
16 Exhibit 27.

17 BY MS. MORENO-TAXMAN:

18 Q Now, how many banks were involved?

19 A There were numerous; upwards of 50.

20 Q And did you subpoena all 50 banks?

21 A No.

22 Q Okay. And so when you look at Exhibit 27, does it  
23 tell you which banks you did subpoena?

24 A It does.

25 Q Okay. Can you just give us the names of those

1 banks?

2 A Sure. JP Morgan Chase, U.S. Bank, MetaBank, Bank  
3 of America, Regents, and that was it.

4 Q Okay. So although there were 100 cards, you  
5 didn't subpoena the records for all 100, right?

6 A No.

7 Q Okay. And when you got back the JP Morgan Chase  
8 information, were you able to identify the three account  
9 names just on your own of who those people were?

10 A Yes.

11 Q And how were you able to do that?

12 A The bank records returned with their information,  
13 the account holder information.

14 Q Okay. And then what did you do with that?

15 A You matched the account holder's account number or  
16 their debit card number with the chart that was produced by  
17 the detective from Wauwatosa to see which vanilla card  
18 corresponded to the account that was encoded on the back.

19 Q And did you create a summary report based on that  
20 information?

21 A I did.

22 Q I'll show you what's been marked as Exhibit 26.  
23 Can you tell us what that is?

24 A This is the summary report that was produced with  
25 all the returned records.

1 Q All right. And does that tell you what the actual  
2 account was and then who the name of the account holder is  
3 and what was the actual account name?

4 A It does.

5 MS. MORENO-TAXMAN: Your Honor, at this time, I  
6 would move in evidence Exhibit 26 and ask to publish it.

7 THE COURT: All right. The Court will receive  
8 Exhibit 26, and you may publish.

9 BY MS. MORENO-TAXMAN:

10 Q So even though you didn't subpoena those 50 banks,  
11 those banks gave you enough information to identify the  
12 names of victims, of how many victims, alleged victims?

13 A On the summary chart, there's 42 alleged victims.

14 Q So does that mean that's all there was?

15 A No.

16 Q What does that mean?

17 A That means that we received subpoena returns for  
18 42 account holders' accounts.

19 Q Okay. And if you had all the time in the world,  
20 you probably could do all 100 cards, right?

21 A We could.

22 Q Now, looking at Exhibit 26, can you tell us if you  
23 see the name Shawna E., which I believe would represent  
24 Shawna Edwards?

25 A I do.

1 Q Okay. And so that was from JP Morgan Chase?

2 A It was.

3 Q And the account connected that to her based  
4 specifically on what was on the magnetic strip was encoded  
5 with what last four digits?

6 A 8856.

7 Q And for Erika Borg, Erika B. on the chart?

8 A The last four of her actual account is 1829.

9 Q And then Matthew Palmieri, Matthew P. on the  
10 chart, towards the bottom of the first page?

11 A The last four are 1014, his actual account.

12 Q Okay. And did you actually contact these people?

13 A I did.

14 Q And so they were real people?

15 A They were.

16 Q And you've met them?

17 A I have.

18 Q And they're the same three that showed up here in  
19 court?

20 A They are.

21 MS. MORENO-TAXMAN: Thank you. I have no other  
22 questions, Your Honor.

23 THE COURT: All right. Thank you.

24 Mr. Uller, any cross-examination?

25 MR. ULLER: Thank you, Judge.

## 1                   CROSS-EXAMINATION

2                   BY MR. ULLER:

3                   Q     Special Agent Hoalcraft, you spent a fair amount  
4     of time with Mr. Muresanu, correct?

5                   A     Correct.

6                   Q     You interviewed him a couple times?

7                   A     Uh-huh.

8                   Q     We've seen portions of the interview you conducted  
9     with him. That's not the extent of your interview with him,  
10    is it?

11                  A     No.

12                  Q     But the written statement that you and your  
13    supervisor obtained is sort of a summary, right?

14                  A     Yes.

15                  Q     And it was a summary that you intended to be able  
16    to use in a proceeding just like this, right?

17                  A     Yes.

18                  Q     The gist of Mr. Muresanu's statements to you is  
19    that he possessed these cards, right?

20                  A     Yes.

21                  Q     That he was working for a guy named Vito, right?

22                  A     Yes.

23                  Q     That Vito is older?

24                  A     Yes.

25                  Q     And Vito gave him these devices?

1 A Yes.

2 Q And Vito told him where to put them on?

3 A Yes.

4 Q And Vito told him when to pick them up?

5 A Yes.

6 Q And Vito collected them from Mr. Muresanu?

7 A Yes.

8 Q And Vito loaded information from that device onto  
9 these other cards, right?

10 A Yes.

11 Q And that Vito gave him the cards?

12 A Yes.

13 Q And that Mr. Muresanu and others then gave the  
14 money obtained from those cards back to Vito?

15 A Portions of the money, yes.

16 Q Seventy-five percent?

17 A Yes.

18 Q Mr. Muresanu didn't tell you that he knew which  
19 cards he was being given, right?

20 A No.

21 Q He didn't tell you he knew whether the cards that  
22 he possessed came from a skimmer that he had installed or a  
23 skimmer that someone else had installed?

24 A No.

25 Q He didn't tell you whether he possessed cards that

1 had come from a specific location?

2 A No.

3 Q He was just given cards?

4 A Yes.

5 Q And the cards had those little stickers on them,  
6 right?

7 A Yes.

8 Q And that kind of told him how he was supposed to  
9 collect money off of those cards, right?

10 A Yes.

11 Q He also told you that he was going to be done with  
12 this soon, didn't he?

13 MS. MORENO-TAXMAN: Objection. Hearsay.

14 THE COURT: That objection is overruled.

15 What did he tell you, Agent Hoalcraft, if  
16 anything?

17 THE WITNESS: From what I recall, he stated that,  
18 yes, eventually he would like to be done.

19 BY MR. ULLER:

20 Q He told you he was getting too old for this,  
21 right?

22 A I don't recall that.

23 Q You don't recall him telling you that he was  
24 getting too old?

25 A I do not. He could have. I don't recall.

1 Q You learned in your investigation that he had  
2 turned 18 just a couple weeks before he was arrested?

3 A Yes.

4 Q And you took the cards to Detective Milotzky  
5 because he's part of this Secret Service task force, right?

6 A Yes.

7 Q The Secret Service office relies on his work as  
8 part of that task force, right?

9 A Yes. His and others, yes.

10 Q And it's your testimony that you sat in on the  
11 entire three-hour process of him loading each of these cards  
12 into the reader?

13 A Yes.

14 Q And you don't have the same software, right?

15 A At the time we didn't.

16 Q Okay. And that's why you were presumably using  
17 him?

18 A Yes.

19 Q You received the same report that is in evidence  
20 here, Exhibit 25?

21 A Yes.

22 Q And when you created Exhibit 26, your summary  
23 chart, you were relying on Exhibit 25, right?

24 A Yes.

25 Q And the information that his report generated,

1           correct?

2           A       Yes.

3                   MR. ULLER: Nothing further.

4                   THE COURT: Anything further?

5                   REDIRECT EXAMINATION

6                   BY MS. MORENO-TAXMAN:

7           Q       Did the defendant ever tell you that Vito was in  
8 Oshkosh, Wisconsin?

9           A       No.

10          Q       And did you have any indication, any time or place  
11 that Vito was in Wisconsin?

12          A       No.

13          Q       With regard to your viewing the detective run all  
14 the cards, did you compare the second time when you saw it  
15 with your own eyes, with your own chart?

16          A       Yes.

17          Q       Okay. So it's not just based on what the  
18 detective from Waukesha said, but you did a second run and  
19 compared it and verified Exhibit 26 is accurate?

20          A       Yes.

21                   MS. MORENO-TAXMAN: I have no further questions.

22                   THE COURT: Anything further, Mr. Uller?

23                   MR. ULLER: No, Your Honor.

24                   THE COURT: All right. Thank you,  
25 Agent Hoalcraft. You may step down.

1 MS. MORENO-TAXMAN: Your Honor, at this time, the  
2 United States rests subject to rebuttal.

3 THE COURT: All right. Thank you.

4 Mr. Uller, does Mr. Muresanu have any evidence to  
5 bring to this jury?

6 MR. ULLER: Your Honor, may we have a brief  
7 sidebar?

8 THE COURT: Certainly.

9 (Bench conference.)

10 MR. ULLER: We do not have any evidence to  
11 present. I do have a Rule 29 motion to bring. I think it's  
12 probably best if maybe we excuse the jury, take that up and  
13 maybe do instructions, and then we can formally rest.

14 THE COURT: All right. That's fine.

15 (In open court.)

16 THE COURT: Members of the jury, the Court has a  
17 couple of matters to address with counsel for which your  
18 presence is not necessary. So we're going to take those up  
19 now. And as soon as the Court is ready to proceed, we will  
20 invite you back into the courtroom.

21 In the meantime, please leave your notebooks as  
22 well as the exhibits that have been circulated for your  
23 consideration on your chair.

24 Once again, as I reminded you throughout the day  
25 yesterday, please do not discuss this case among yourselves

1 nor with anyone who has anything to do with this case.  
2 You're certainly free to talk about lots of other things  
3 including the miracle in Green Bay on Monday, the politics,  
4 the weather, the Brewers, anything you would like, but,  
5 please, do not discuss this case.

6 The Court stands in recess insofar as the jury is  
7 concerned.

8 (Jury not present.)

9 THE COURT: Mr. Uller.

10 MR. ULLER: Thank you, Your Honor.

11                   The Government has just rested, and pursuant to  
12                   Rule 29 of the Rules of Criminal Procedure, Mr. Muresanu is  
13                   moving for an acquittal as to all counts.

At this point, I would like to focus on Counts 2 through 4. I've submitted to the Court a written motion. I will shortly docket that on the electronic docket. The basis of this motion is that the Government has charged in this indictment Mr. Muresanu with knowingly attempting to commit aggravated identity theft in violation of Section 18, U.S.C. § 1028A(a)(1).

21 There is no general federal attempt statute, and  
22 the Government's charge here of attempted aggravated  
23 identity theft is permissible only if Section 1028A itself  
24 prescribes attempt. 1028A does not prescribe attempt. 1029  
25 does. Mr. Muresanu, interestingly, isn't charged with

1 attempted access device fraud. In Count 1, he's just  
2 charged with access device fraud, or possessing 15 or more  
3 counterfeit devices.

4 But it's the Defense's position that because the  
5 evidence in this case cannot support a conviction to the  
6 offense charged in the indictment, that Counts 2 through 4,  
7 attempted aggravated identity theft, should be -- the Court  
8 should enter a judgment of acquittal.

9 I've provided some case law in the motion for both  
10 the general propositions that there's no general attempt  
11 statute, as well as the general proposition that Rule 29 is  
12 the appropriate avenue to bring this motion.

13 I can appreciate a response from the Government  
14 that this is a -- more appropriately -- a Rule 12 motion.  
15 Certainly I acknowledge that Rule 12 requires that motions  
16 alleging, indictment failing to state an offense, must be  
17 filed before trial.

18 Respectfully, presupposing that argument, this  
19 isn't a motion for a failure to state an offense. The case  
20 law is quite clear that if the indictment fails to state an  
21 offense, either when it fails to charge an essential element  
22 of the crime or that the specific facts alleged in the  
23 indictment fall outside the scope of the relevant criminal  
24 statute.

25 A common example of when an indictment doesn't

1 include an element of the offense is an interstate commerce  
2 requirement, or that a bank -- or the indictment doesn't  
3 include as an element that a financial institution was  
4 authorized and acting under the laws of the United States.  
5 That's *United States vs. Locklear*, Seventh Circuit, 97 F.3d  
6 196.

7 As to the other type of -- or other way a motion  
8 or an indictment will fail to state offenses where there are  
9 undisputed facts that fall outside the scope of a criminal  
10 statute, it's sort of akin to a summary judgment motion.  
11 But that type of motion presupposes that the offense alleged  
12 is an actual offense.

13 The crime charged here, attempted aggravated  
14 identity theft, is not a legally cognizable offense, and,  
15 therefore, Rule 29, we submit, is the proper avenue to bring  
16 this motion.

17 THE COURT: Thank you. I think, Mr. Uller, with  
18 all due respect, you've answered your own question, and that  
19 is if your motion is to be a bona fide motion, it should  
20 have been brought under Rule 12. We are way past that.  
21 It's now up to the jury, and whatever the jury does, that's  
22 a matter of argument, and then it goes to the Seventh  
23 Circuit and for potentially a new trial.

24 So the motion under Rule 29 is denied as being  
25 improvidently cast as a Rule 29 motion, which it should have

1           been made under Rule 12.

2                   Ms. Moreno-Taxman, Ms. Kraft, if you have anything  
3                   you want to add to the record, now is your opportunity.

4                   MS. MORENO-TAXMAN: Can we just have a minute,  
5                   Your Honor?

6                   THE COURT: Certainly.

7                   MS. MORENO-TAXMAN: Judge, our position is that  
8                   with regard to the indictment, the indictment is a notice  
9                   document, and, in fact, we have proved in this case not the  
10                  attempt, but the actual possession of the aggravated  
11                  identity devices.

12                  Even when the Defense and the prosecution gave the  
13                  Court its summary of the facts to this case to be read to  
14                  the jury, it never had the word "attempt" in it. So,  
15                  really, the word "attempt" is surplusage, and we would ask  
16                  at this time that the Court strike the word "attempt" from  
17                  the indictment.

18                  THE COURT: All right. Thank you.

19                  Anything further, Mr. Uller?

20                  MR. ULLER: Well, Judge, that would be a variance  
21                  of the indictment. The Government has provided no authority  
22                  for that; and it's not surplusage, it's a separate crime.

23                  THE COURT: Well, frankly, neither side can have  
24                  it both ways. If it's not a crime, then Rule 12 applies; if  
25                  it is a crime, then it's appropriately alleged. But if we

1 go with the core evidence in the case, it is not a situation  
2 in which a defendant simply possessed one of the victim's  
3 cards and never used it. That theoretically may be cast as  
4 an attempt, but we have much more than simply possession of  
5 someone else's identity. It was actually used. And to that  
6 extent, I will leave it to the Seventh Circuit Court of  
7 Appeals as to how they wish to construe the word "attempt."  
8 The word "attempt" appears nowhere in the jury instructions  
9 or the elements of the offense. So this is not a case in  
10 which the defendant was sandbagged by the Government. If  
11 anybody was sandbagged, it was the Court and Government  
12 counsel with this being sprung at the 11<sup>th</sup> hour, 59<sup>th</sup>  
13 minute, 59<sup>th</sup> second, and I take strong exception to that  
14 approach. So the motion is denied. The jury instructions  
15 will be read as they are given. The indictment is not  
16 before the jury, only the facts and the elements of the  
17 offense as cast in the jury instructions.

18 Anything further anybody wishes to raise at this  
19 juncture? Now is your opportunity.

20 MS. MORENO-TAXMAN: We have nothing further,  
21 Your Honor. Thank you.

22 MR. ULLER: No, Your Honor. I guess just so it's  
23 not viewed as a waiver, we reserve the right to argue under  
24 Rule 29 for an acquittal, under other grounds as well.

25 THE COURT: Well, for the record, you've made a

1 Rule 29 motion. If you have anything further to submit in  
2 terms of other grounds, depending, of course, what the jury  
3 does, you have, under the rules, I believe, a period of  
4 seven days to renew the motion after jury verdict.

5 MR. ULLER: The Defense does not have any evidence  
6 to present. I don't know if it's the Court's practice to  
7 conduct a colloquy with the defendant about his right to  
8 testify.

9 THE COURT: I assume you have done so just as you  
10 will follow the Court's instructions with regard to having  
11 an adequate record with your client on the matter of  
12 resolution short of trial, the matter of his right to  
13 testify and so forth, but I have no interest in pursuing it  
14 since it's -- as an officer of the Court, you have an  
15 independent obligation to do likewise. So I have no reason  
16 to doubt that you haven't discussed it.

17 Anything further, Ms. Moreno-Taxman or Ms. Kraft?

18 MS. MORENO-TAXMAN: No, Your Honor.

19 THE COURT: All right. We'll stand in recess for  
20 five minutes.

21 (Break.)

22 (Jury not present.)

23 THE COURT: Before the jury comes in, do counsel  
24 wish to make some matters of record?

25 Ms. Moreno-Taxman, did you have something?

1 MS. MORENO-TAXMAN: I think it's Defense counsel  
2 that wants to say something, Your Honor.

3 THE COURT: All right. I noticed you have a slide  
4 up for Count 1. Have you taken the word "attempt" out?

5 MS. KRAFT: We have, Your Honor.

6 THE COURT: Counts 2, 3, and 4?

7 MS. KRAFT: Yes, we have.

8 THE COURT: All right.

9 Mr. Uller.

10 MR. ULLER: Your Honor, I've reviewed the new  
11 instructions that the Court has provided, and, obviously,  
12 the Court has removed the words "attempt" from what the  
13 grand jury has charged, and the Court has removed the  
14 "attempt" definition from the instructions.

15 It's our position that the grand jury in this case  
16 charged Mr. Muresanu with three counts of attempting to  
17 commit aggravated identity theft. That's the offense that  
18 was charged, and that's the offense that should be presented  
19 to the jury.

20 The Court had mentioned earlier that there was  
21 ample evidence that Mr. Muresanu had used the devices. I  
22 don't dispute that, but there was no evidence presented that  
23 Mr. Muresanu used the devices belonging to the three  
24 witnesses who were charged in Counts 2, 3, and 4.

25 THE COURT: That's a matter of fact. If that's

1 your position, bring it to the attention of the jury. If  
2 they accept your version of the facts, they'll acquit  
3 Mr. Muresanu. If the facts demonstrate otherwise, well,  
4 then it's a different result. So those are factual matters.

5 The key in all of this is the jury instructions  
6 relating to the elements of the offense charged in Counts 2,  
7 3, and 4. And if you look at the elements, there is no  
8 reference, nor was there ever a reference, to attempt. That  
9 only came about as a result of that word appearing in the  
10 indictment. What we really have here is the reverse of  
11 what, in the parlance of jury instructions, are lesser  
12 included offenses. In other words, if the statute provided  
13 for penalties for attempted as well as actual, the lesser  
14 included offense would be attempt. But in this case, we  
15 have the reverse. If the Government is correct, these cards  
16 were actually used, not attempted. And if the evidence  
17 doesn't show that they were actually used, then the jury  
18 will do the right thing and find Mr. Muresanu not guilty  
19 because attempted use does not constitute an offense under  
20 1028A.

21 Anything further?

22 MS. MORENO-TAXMAN: Judge, I just will want to say  
23 that we would like to make sure that the record is clear  
24 that throughout these last few weeks, we have received  
25 numerous motions every time at the last minute from Defense

1 counsel.

2                   This particular motion should've been brought  
3 pursuant to Rule 12. The fact that it wasn't even  
4 electronically filed and brought to court, I think, is  
5 further evidence of just trying to get us -- rather than  
6 have a fair trial, the Defense trying to manipulate the  
7 system, and I find that conduct offensive, and it has gone  
8 on throughout the proceedings of this case.

9                   THE COURT: Well, we could go all the way back and  
10 start fresh because, as the Court staff have reminded  
11 counsel, this case doesn't belong in the Milwaukee Division.  
12 It should've been assigned to Green Bay. And the only time  
13 the Court became aware of the fact that it was in the  
14 Milwaukee Division is when we saw the pretrial report, and  
15 it's too late to change now. But this is the second case  
16 that's been assigned to this branch of the Court that  
17 should've been assigned to Green Bay. And we are going to,  
18 through the Clerk's office, look with greater scrutiny at  
19 the designation of these cases being in the Milwaukee  
20 Division versus Green Bay. And so it's unfortunate.

21                   All the witnesses, save Mr. Hoalcraft, were from  
22 the Oshkosh area. The conduct occurred in Oshkosh, and it  
23 should've been assigned to the Green Bay Division.

24                   It's abundantly clear that obviously there were  
25 some discussions, although they didn't reach fruition to

1 resolve the case short of trial. And then there was a  
2 further attempt to get Mr. Muresanu out on bond. Obviously,  
3 had that occurred, there's little question that he would've  
4 left the jurisdiction.

5 So there's a lot of combinations of permutations  
6 here of what went so terribly, terribly wrong, but we do the  
7 best we can, and we've now reached the point where the case  
8 is ready to conclude.

9 When the jury comes in, I will invite Mr. Uller to  
10 make a record with regard to whether he wishes to present  
11 any evidence if, as he said earlier, his client chooses not  
12 to. We have prepared to move forward and instruct the jury.

13 Anything further?

14 MS. KRAFT: Judge, yes. I wanted to say that the  
15 statute requires that we prove that the defendant either  
16 transferred, possessed, or used. So it isn't limited to  
17 "used." I believe that the jury instructions that the Court  
18 has prepared are a correct statement of the law, and I want  
19 the record to reflect that.

20 THE COURT: Certainly.

21 Mr. Shepherd, you may invite the jurors.

22 (Jury present.)

23 THE COURT: The counsel have completed their  
24 attention to matters that didn't involve your presence, so  
25 we're now ready to resume with the balance of the trial.

1                   At this time, I'm going to call upon Mr. Uller for  
2 any evidence that Mr. Muresanu wishes to bring to your  
3 attention.

4                   Mr. Uller.

5                   MR. ULLER: The Defense also rests.

6                   THE COURT: Thank you.

7                   Members of the jury, that brings us to the next  
8 phase of this case. The Court now does declare the receipt  
9 of evidence in this case closed.

10                  Subject to my staff reviewing with counsel to  
11 insure that each of the exhibits that have been received are  
12 part of the record, and having completed our work on the  
13 jury instructions, I'm going to have Mr. Shepherd distribute  
14 to each of you a copy of the Court's instructions to follow  
15 as I read them aloud.

16                  I now invite you to turn to the binder with the  
17 instructions beginning with Part I, "General Introduction."

18                  Members of the jury, now that you have heard all  
19 the evidence in the case, it becomes my duty to instruct you  
20 on the law which applies to this case. These instructions  
21 will be in three parts. First, the instructions on general  
22 rules which define and control the jury's duties in a  
23 criminal case. Second, the instructions which relate to the  
24 offenses with which the defendant is charged. And, third,  
25 some rules and guidelines for your deliberations and return

1 of your verdict.

2 At the conclusion of my instructions, the  
3 attorneys for the parties will deliver their closing  
4 arguments followed by the concluding instructions of the  
5 Court. Copies of these instructions will be available in  
6 the jury room for each of you to consult should you find it  
7 necessary.

8 It is your first duty to find the facts from all  
9 the evidence in the case. To those facts, you must apply  
10 the law as I give it to you in these instructions whether  
11 you agree with the law or not. All of the instructions are  
12 equally important and should be considered together as a  
13 connected series and regarded as the law applicable to the  
14 case. As jurors, you have no right to disregard or give  
15 special attention to any one of the instructions or to  
16 question the wisdom of any rule of law.

17 As jurors, you should consider and view the  
18 evidence in light of your own observations and experiences  
19 in the affairs of life.

20 In determining the facts, you should do so from a  
21 fair consideration of the evidence. That means you must not  
22 be influenced by prejudice, fear, favor, personal likes or  
23 dislikes, opinions, or sympathy.

24 In reaching your verdict, you may consider only  
25 the testimony of the witnesses and the exhibits received in

1 evidence. Certain things are not evidence, and you may not  
2 consider them in determining what the facts are. Those  
3 matters and things which are not evidence include the  
4 following: First, arguments and statements by the lawyers  
5 for the parties are not evidence. The lawyers are not  
6 witnesses. What they have said in their opening statements  
7 served to acquaint you with the facts they expected the  
8 evidence to show. What the attorneys say in their closing  
9 arguments is intended to help you interpret the evidence.  
10 You should consider the closing arguments carefully;  
11 however, if the evidence as you recall it differs from the  
12 way a lawyer has characterized it, keep in mind it is your  
13 recollection that controls during your deliberations.

14 Second, questions and objections by lawyers are  
15 not evidence. The lawyers for the parties have a duty to  
16 object to what they feel are improper questions asked of the  
17 witnesses. You should not draw any conclusions for either  
18 side from the fact that an objection was made to any  
19 question and that the witness may not have been permitted to  
20 answer it. If I sustained objections to questions the  
21 lawyers asked, you must not speculate on what the answers  
22 might have been.

23 Third, testimony which has been excluded or  
24 stricken, or that you have been instructed to disregard, is  
25 not evidence and must not be considered. In addition, if

1       testimony or exhibits have been received for a limited  
2       purpose, you must follow the limiting instruction given as  
3       to such matters.

4                  Fourth, anything you may have heard or seen about  
5       the case outside the courtroom must be entirely disregarded  
6       by you. You are to decide this case solely on the basis of  
7       the evidence received during the trial.

8                  If, during the course of this trial, you have  
9       gained any impression that I have a feeling one way or  
10      another about this case, then you should completely  
11      disregard any such impression because you, as jurors, are  
12      the sole judges of the evidence and the credibility of the  
13      witnesses in this case. My feelings are wholly immaterial.  
14      Neither by these instructions nor by any ruling or remark  
15      which I have made do I mean to indicate any opinion as to  
16      the facts or as to what your verdict should be. Moreover, I  
17      have a duty to caution or warn an attorney who does  
18      something that I believe is not in keeping with the rules of  
19      evidence or procedure. You are not to draw any inference  
20      against the side whom I may caution or warn during the  
21      trial. You are the sole and exclusive judges of the facts.

22                 In determining the facts, you are reminded that  
23      before each member of the jury was accepted and sworn to act  
24      as a juror, you were asked questions regarding your  
25      competency, qualifications, fairness, and freedom from

1 prejudice or sympathy. On the faith of those answers, each  
2 of you was accepted by the parties to serve as a juror;  
3 therefore, those answers are as binding on each of you now  
4 as they were then and should remain so until the jury is  
5 discharged from consideration of this case.

6 The defendant is presumed to be innocent of each  
7 and every one of the charges for which he is on trial. This  
8 presumption remains with the defendant throughout the stage  
9 of the trial and during your deliberations on the verdict,  
10 and it is not overcome unless from all of the evidence to  
11 the case you are convinced beyond a reasonable doubt that  
12 the defendant is guilty.

13 The Government has the burden of proving the guilt  
14 of the defendant as to the offenses charged in the  
15 indictment beyond a reasonable doubt, and this burden  
16 remains on the Government throughout the case. The  
17 defendant is never required to prove his innocence or to  
18 produce any evidence.

19 The evidence from which you are to determine the  
20 facts in order to reach a verdict consists of, first, the  
21 sworn testimony of witnesses, both on direct and  
22 cross-examination, regardless of who called the witness.  
23 Second, the exhibits which have been received into evidence,  
24 regardless of who may have produced them. And, third, all  
25 facts and events that may have been stipulated by the

1 parties. A stipulation is an agreement that certain facts  
2 are true.

3 During the course of the trial, I occasionally may  
4 have asked questions of a witness in order to bring out  
5 facts not then fully covered in the testimony. Please do  
6 not assume that I hold any opinion on the matters to which  
7 my questions may have related. Remember that you, as  
8 jurors, are at liberty to disregard all comments of the  
9 Court in arriving at your own findings as to the facts.

10 There are two kinds of evidence: Direct and  
11 circumstantial. Direct evidence is direct proof of a fact  
12 such as the testimony of a person who claims to have  
13 personal knowledge related to the criminal acts which have  
14 been charged, such as an eyewitness. Circumstantial  
15 evidence, on the other hand, is proof of a chain of facts  
16 and circumstances which tend to show whether the defendant  
17 is guilty or not guilty. The law makes no distinction  
18 between the weight to be given either to direct or  
19 circumstantial evidence; therefore, all of the evidence in  
20 the case, including circumstantial evidence, should be  
21 considered by you in arriving at your verdict.

22 It is for you to decide whether a fact has been  
23 proved by circumstantial evidence. In making that decision,  
24 you must consider all the evidence in the light of reason,  
25 common sense, and experience. You are to consider only the

1 evidence in the case. But in your consideration of the  
2 evidence, you are not limited to the balanced statements of  
3 the witnesses; in other words, you are not limited to what  
4 you see and hear as the witnesses testify. You are  
5 permitted to draw, from facts which you find have been  
6 proved, such reasonable inferences as seem justified in the  
7 light of your experience.

8                   Inferences are deductions or conclusions from  
9 which reason and common sense lead the jury to draw from  
10 facts which have been established by the evidence in the  
11 case. You are allowed to make reasonable inferences so long  
12 as they are based on the evidence.

13                  If you have taken notes during the trial, you may  
14 use them during deliberations to help you remember what  
15 happened during the trial. You should use your notes only  
16 as aids to your memory. The notes are not evidence. All of  
17 you should rely on your independent recollection of the  
18 evidence, and you should not be unduly influenced by the  
19 notes of other jurors. Notes are not entitled to any more  
20 weight than the memory or impressions of each juror.

21                  You, as jurors, are the sole judges of the  
22 credibility of the witnesses and the weight their testimony  
23 deserves. You may be guided by the appearance and conduct  
24 of each witness, or by the manner in which each witness  
25 testified, or by the character or the testimony given or by

1 evidence to the contrary of the testimony given; however,  
2 you should not be influenced by any person's race, color,  
3 religion, national ancestry, or sex.

4 You should carefully scrutinize all the testimony  
5 given, the circumstances under which each witness has  
6 testified, and every matter in evidence which tends to show  
7 whether a witness is worthy of belief. Consider each  
8 witness's intelligence, motive, and state of mind, and  
9 demeanor or manner while on the stand. Consider each  
10 witness's ability to have heard, observed, or otherwise have  
11 knowledge of the matters as to which he or she has  
12 testified, and whether he or she impresses you as having an  
13 accurate recollection of these matters. Consider also any  
14 relation each witness may bear to either side of the case,  
15 including any bias or prejudice held by the witness, the  
16 manner in which each witness might be affected by your  
17 verdict, the extent to which, if at all, each witness is  
18 either supported or contradicted by other evidence in the  
19 case, and any difference between a witness's behavior when  
20 responding to questions by the party sponsoring the  
21 witness's testimony and questions asked when the witness is  
22 cross-examined by the other party.

23 In weighing the testimony of a law enforcement  
24 officer, you should apply the same standards as you apply to  
25 the testimony of any other witness. The fact that a witness

1       is a law enforcement officer does not make his or her  
2       testimony any more or less credible than the testimony of  
3       any other witness. Inconsistencies or discrepancies in the  
4       testimony of a witness, or between the testimony of  
5       different witnesses, may or may not cause the jury to  
6       discredit such testimony. Two or more persons witnessing an  
7       incident or a transaction may see or hear it differently,  
8       innocent misrecollection, like failure of recollection, is a  
9       common experience. In weighing the effect of a discrepancy,  
10      always consider whether it pertains to a matter of  
11      importance or an unimportant detail, and whether the  
12      discrepancy results from independent error or intentional  
13      falsehood.

14                  After making your own judgment, you will give the  
15        testimony of each witness such weight, if any, as you may  
16        think it deserves.

17                  You may, in short, accept or reject the testimony  
18        of any witness in whole or in part.

19                  A witness may be discredited or impeached by  
20        contradictory evidence, or by evidence that at some other  
21        time the witness has said or done something, or has failed  
22        to say or do something which is inconsistent with the  
23        witness's present testimony. If you find that a witness's  
24        prior statement is inconsistent with the witness's testimony  
25        at trial, you may consider the prior statement only in

1       deciding the truthfulness and accuracy of such witness's  
2       trial testimony. You may not consider the prior statement  
3       as evidence of the matters contained in the prior statement;  
4       however, if the prior statement was made under oath, you may  
5       also consider it as evidence of the truth of the matters  
6       contained in the prior statement.

7                 If you believe any witness has been impeached and  
8       thus discredited, it is your exclusive province to give the  
9       testimony of that witness such credibility, if any, as you  
10      may think it deserves.

11               A defendant has an absolute right not to testify  
12      or present evidence. You may not consider in any way the  
13      fact that the defendant did not testify or present evidence.  
14      You should not even discuss it in your deliberations.

15               The rules of evidence ordinarily do not permit  
16      witnesses to testify as to opinions or conclusions. An  
17      exception to this rule exists as to those whom we call  
18      expert witnesses. Witnesses who, by education and  
19      experience, have become expert in some art, science,  
20      profession, or calling, may state their opinions as to  
21      relevant and material matters in which they profess to be  
22      expert and may also state their reasons for the opinion.  
23      You should judge these witnesses' opinions and testimony the  
24      same way you judge the testimony of any other witness. In  
25      deciding how much weight to give to these opinions and

1       testimony, you should consider the witness's qualifications,  
2       how he or she reached his or her opinions, and the factors I  
3       have described for determining the believability of  
4       testimony.

5                  You have heard testimony that the defendant made  
6       statements to law enforcement. You must decide whether the  
7       defendant actually made the statement and, if so, how much  
8       weight to give to the statements. In making these  
9       decisions, you should consider all of the evidence including  
10      the defendant's personal characteristics and circumstances  
11      under which the statements may have been made.

12                 Certain summaries or charts were admitted in  
13      evidence. You may use those summaries or charts as evidence  
14      even though the underlying documents are not here.

15                 You have heard a recorded conversation and have  
16      seen video recordings. This is proper evidence that you  
17      should consider together with and in the same way you  
18      consider the other evidence.

19                 You were also given transcripts of recorded  
20      conversations to help you follow the recording as you  
21      listened to it. The recording is the evidence of what was  
22      said and who said it. The transcripts are not evidence. If  
23      you noticed any differences between what you heard in a  
24      conversation and what you read in the transcripts, your  
25      understanding of the recording is what matters; in other

1 words, you must rely on what you heard, not what you read.  
2 And if you could not hear or understand certain parts of a  
3 recording, you must ignore the transcripts as far as those  
4 parts are concerned. You may consider a person's actions,  
5 facial expressions, and lip movements that you are able to  
6 observe on a video recording to help you determine what was  
7 said and who said it.

8 You are instructed that it is proper for an  
9 attorney to interview any witness in preparation for trial.

10 You are not bound to decide any issue of fact in  
11 accordance with the testimony of any number of witnesses  
12 which does not produce in your minds belief in the  
13 likelihood of truth, as against the testimony of a lesser  
14 number of witnesses, or other evidence which does produce  
15 such belief in your minds.

16 The test is not which side brings the greater  
17 number of witnesses or presents the greater quantity of  
18 evidence, but which witness, and which evidence, appeals to  
19 your minds as being most accurate and otherwise trustworthy.

20 The law does not require any party to call as  
21 witnesses all persons who may have been present at any time  
22 or place involved in the case, or who may appear to have  
23 some knowledge of the matters in issue at this trial, nor  
24 does the law require any party to produce as exhibits all  
25 papers and things mentioned in evidence in the case.

1                   The jury must always bear in mind that the law  
2 never imposes upon a defendant in a criminal case the burden  
3 or duty of calling any witness or producing any evidence,  
4 and no adverse inference may be drawn from his or her  
5 failure to do so.

6                   Part two. The law applicable to the offenses with  
7 which the defendant is charged.

8                   Members of the jury, the defendant,  
9 Ionel Muresanu, is charged in a four-count indictment with  
10 possession of multiple access devices with the intent to  
11 defraud and aggravated identity theft. If proven, each of  
12 these offenses constitute a violation of federal law.

13                  Mr. Muresanu has entered a plea of not guilty to  
14 each of the charges and is presumed innocent unless and  
15 until proven guilty beyond a reasonable doubt. The  
16 Government has the burden of proving each of the essential  
17 elements of each of the crimes charged in the indictment  
18 beyond a reasonable doubt.

19                  The indictment is simply the formal way of telling  
20 the defendant what crimes he is accused of committing. It  
21 is not evidence that the defendant is guilty. It does not  
22 even raise a suspicion of guilt. The indictment in this  
23 case charges as follows: Count 1, access device fraud. The  
24 grand jury charges that, between on or about May 15, 2018  
25 and May 16, 2018, in the State and Eastern District of

1 Wisconsin and elsewhere, Ionel Muresanu, with the intent to  
2 defraud, did knowingly possess 15 or more counterfeit and  
3 unauthorized access devices as defined in Title 18, United  
4 States Code, Sections 1029E(2) and E(3), and said conduct  
5 affected interstate commerce, all in violation of Title 18,  
6 United States Code, Sections 1029A(3) and (2).

7 Count 2. Aggravated identity theft. The grand  
8 jury further charges that on or about May 16, 2018, in the  
9 State and Eastern District of Wisconsin and elsewhere,  
10 Ionel Muresanu, during and in relation to a felony violation  
11 of Title 18, United States Code, Section 1029A(3), as  
12 charged in Count 1, did knowingly transfer, possess, and use  
13 without lawful authority a means of identification of  
14 individual M.P., knowing that said means of identification  
15 belonged to another person, all in violation of Title 18,  
16 United States Code, Section 1028A(a)(1) and (2).

17 Count 3. Aggravated identity theft. The grand  
18 jury further charges that on or about May 16, 2018, in the  
19 State and the Eastern District of Wisconsin and elsewhere,  
20 Ionel Muresanu, during and in relation to a felony violation  
21 of Title 18, United States Code, Section 1029A(3), as  
22 charged in Count 1, did knowingly transfer, possess, and  
23 use, without lawful authority a means of identification of  
24 individual S.L.E. knowing that said means of identification  
25 belonged to another person, all in violation of Title 18,

1           United States Code, Section 1028A(a)(1) and (2).

2           Count 4. Aggravated identity theft. The grand  
3           jury further charges that on or about May 16, 2018, in the  
4           State and Eastern District of Wisconsin and elsewhere,  
5           Ionel Muresanu, during and in relation to a felony violation  
6           of Title 18, United States Code, Section 1029A(3), as  
7           charged in Count 1, did knowingly transfer, possess, and use  
8           without lawful authority a means of identification of  
9           individual E.L.B. knowing that said means of identification  
10          belonged to another person, all in violation of Title 18,  
11          United States Code, Section 1028A(a)(1) and (2).

12          Instruction common to all counts. The indictment  
13          charges that the offenses were committed on or about a  
14          certain date or between certain dates. Although the  
15          evidence need not establish with certainty the exact date of  
16          each offense, it must establish that the offense was  
17          committed on a date, or between dates, reasonably near the  
18          dates charged in the indictment.

19          When the word "knowingly" is used in these  
20          instructions, it means that the defendant realizes what he  
21          is doing and is aware of the nature of his conduct and does  
22          not act through ignorance, mistake, or accident. In  
23          deciding whether the defendant acted knowingly, you may  
24          consider all of the evidence including what the defendant  
25          did or said.

1           A person possesses an object if he has the ability  
2 and intention to exercise direction or control over the  
3 object, either directly or through others. A person may  
4 possess an object even if he is not in physical contact with  
5 it and even if he does not own it.

6           More than one person may possess an object. If  
7 two or more persons share possession, that is called joint  
8 possession. If only one person possesses the object, that  
9 is called sole possession. The term "possess" in these  
10 instructions includes both joint and sole possession.

11           Any person who knowingly aids, counsels, commands,  
12 induces, or procures the commission of an offense may be  
13 found guilty of that offense if he knowingly participated in  
14 the criminal activity and tried to make it succeed.

15           In deciding your verdict, you should not consider  
16 the possible punishment for the defendant who is on trial.  
17 If you decide that the Government has proved the defendant  
18 guilty beyond a reasonable doubt, then it will be my job to  
19 decide on the appropriate punishment.

20           Count 1. Count 1 of the indictment charges the  
21 defendant with possession of multiple access devices with  
22 intent to defraud. In order for you to find the defendant  
23 guilty of this charge, the Government must prove each of the  
24 four following elements beyond a reasonable doubt. One, the  
25 defendant knowingly possessed 15 or more access devices,

1 and, two, those devices were counterfeit, and, three, the  
2 defendant possessed those devices with the intent to defraud  
3 and, four, the defendant's conduct affected interstate or  
4 foreign commerce.

5                 If you find from your consideration of all the  
6 evidence that the Government has proved each of these  
7 elements beyond a reasonable doubt as to the charge you are  
8 considering, then you should find the defendant guilty of  
9 that charge.

10               If, on the other hand, you find from your  
11 consideration of all the evidence that the Government has  
12 failed to prove any one of these elements beyond a  
13 reasonable doubt as to the charge you are considering, then  
14 you must find the defendant not guilty of that charge.

15               The term "access device" means any card, plate,  
16 code, account number, electronic serial number, mobile  
17 identification number, personal identification number, or  
18 other telecommunications service equipment, or instrument  
19 identifier, or other means of account access that can be  
20 used alone or in conjunction with another access device to  
21 obtain money, goods, services, or any other thing of value,  
22 or that can be used to initiate a transfer of funds other  
23 than a transfer originated solely by paper instrument.

24               The term "counterfeit access device" means any  
25 access device that is counterfeit, fictitious, altered, or

1 forged, or an identifiable component of an access device or  
2 a counterfeit access device.

3 A person acts with intent to defraud if he acts  
4 knowingly with the intent to deceive or cheat in order to  
5 cause a gain of money or property to the defendant or  
6 another or the potential loss of money or property to  
7 another.

8 Interstate or foreign commerce involves business,  
9 trade, travel, transportation, or communication between any  
10 place in a state and any place outside that state, or any  
11 two places within a state but through any place outside that  
12 state. A defendant's conduct affects commerce if the  
13 natural consequences of the defendant's actions had some  
14 effect on commerce, however minimal.

15 Counts 2, 3, and 4.

16 Counts 2, 3, and 4 of the indictment charge the  
17 defendant with aggravated identity theft. In order for you  
18 to find the defendant guilty of this charge, the Government  
19 must prove each of the five following elements beyond a  
20 reasonable doubt: One, the defendant committed the felony  
21 offense of possession of multiple access devices with intent  
22 to defraud as charged in Count 1, and, two, during and in  
23 relation to that offense, the defendant knowingly possessed  
24 a means of identification, and, three, the defendant did so  
25 without lawful authority, and, four, the means of

1 identification belonged to another person, and, five, the  
2 defendant knew that the means of identification belonged to  
3 another person.

4           If you find from your consideration of all the  
5 evidence that the Government has proved each of these  
6 elements beyond a reasonable doubt as to the charge you are  
7 considering, then you should find the defendant guilty of  
8 that charge.

9           If, on the other hand, you find from your  
10 consideration of all the evidence that the Government has  
11 failed to prove any one of these elements beyond a  
12 reasonable doubt as to the charge you are considering, then  
13 you must find the defendant not guilty of that charge.

14           A person possesses a means of identification in  
15 relation to a crime if it had a purpose, role, or effect  
16 with respect to the felony offense. It also means that the  
17 possession of the means of identification had a connection  
18 to or relationship with the felony offense.

19           You are here to determine the guilt or innocence  
20 of the defendant as to each count charged in the indictment  
21 from the evidence presented in the case. You are not called  
22 upon to return a verdict as to the guilt or innocence of any  
23 other person or persons. So if the evidence in the case  
24 convinces you beyond a reasonable doubt of the guilt of the  
25 defendant as to the particular count under consideration,

1 you should so find even though you may believe one or more  
2 other persons may also be guilty.

3 A defendant's presence at the scene of a crime and  
4 knowledge that a crime is being committed is not sufficient  
5 by itself to establish the defendant's guilt.

6 The punishment provided by law for each offense  
7 charged in the indictment is a matter exclusively within the  
8 province of the Court and should never be considered by the  
9 jury in any way in arriving at an impartial verdict as to  
10 the guilt or innocence of the defendant.

11                   Part 3. Deliberations.

12                   Members of the jury, this case will be submitted  
13 to you with a verdict form which requires your verdict as to  
14 each of the charges against the defendant contained in the  
15 indictment.

16                   I will now invite your attention to the verdict  
17 form which follows your instructions. A verdict form reads,  
18 "United States District Court, Eastern District of  
19 Wisconsin. *United States of America, Plaintiff, vs.*  
20 *Ionel Muresanu, Defendant, 18-CR-129-JPS.* Verdict: We, the  
21 jury, duly impaneled and sworn for our verdict in the  
22 above-entitled action find the defendant, Ionel Muresanu" --  
23 and a blank line appears with the words "guilty, not guilty"  
24 beneath it of the offense charged in Count 1 of the  
25 indictment, possession of 15 or more access devices.

1                   Based upon the jury's unanimous determination,  
2 your foreperson will insert either the word "guilty" or the  
3 words "not guilty" as appropriate.

4                   Another blank line appears with the words "guilty,"  
5 not guilty" beneath it of the offense charged in Count 2 of  
6 the indictment.

7                   Aggravated identity theft as to individual M.P.

8                   Once again, based upon the jury's unanimous  
9 determination, your foreperson will insert either the word  
10 "guilty" or "not guilty" as appropriate.

11                  Another blank line appears with the words "guilty,"  
12 not guilty" beneath it of the offense charged in Count 3 of  
13 the indictment.

14                  Aggravated identity theft as to individual S.L.E.

15                  Once again, based upon the jury's unanimous  
16 determination, your foreperson will insert either the word  
17 "guilty" or words "not guilty" as appropriate. Another  
18 blank line appears with the words "guilty" or "not guilty"  
19 beneath that of the offense charged in Count 4 of the  
20 indictment.

21                  Aggravated identity theft as to individual E.L.B.

22                  Once again, based upon the jury's unanimous  
23 determination, your foreperson will insert either the word  
24 "guilty" or the words "not guilty" as appropriate, dated at  
25 Milwaukee, Wisconsin, this blank day of September, 2018,

1 beneath which appears the blank line followed by foreperson.

2                 Once the verdict form has been completed with the  
3 answers the jury has unanimously agreed upon, your  
4 foreperson will affix the date to the verdict form as well  
5 as his or her signature.

6                 Your verdict must represent the considered  
7 judgment of each juror. Your verdict, whether it be guilty  
8 or not guilty, must be unanimous.

9                 You should make every reasonable effort to reach a  
10 verdict. In doing so, you should consult with one another,  
11 express your own views, and listen to the opinions of your  
12 fellow jurors. Discuss your differences with an open mind.  
13 Do not hesitate to reexamine your own views and change your  
14 opinion if you come to believe it is wrong, but you should  
15 not surrender your honest beliefs about the weight or effect  
16 of evidence solely because of the opinions of your fellow  
17 jurors or for the purpose of returning a unanimous verdict.

18                 The 12 of you should give fair and equal  
19 consideration to all the evidence and deliberate with the  
20 goal of reaching an agreement which is consistent with the  
21 individual judgment of each juror.

22                 You are impartial judges of the facts. Your sole  
23 interest is to determine whether the Government has proved  
24 its case as to each offense charged in the indictment beyond  
25 a reasonable doubt.

1                   Members of the jury, that concludes the Court's  
2 core instructions on the law applicable to the case. I will  
3 have some concluding instructions for you following the  
4 closing arguments.

5                   At this time, we're going to turn to the next  
6 phase of the case in which, as I explained to you yesterday,  
7 counsel are afforded another opportunity to address you in a  
8 final summation of closing argument; that is, each side is  
9 given an opportunity to discuss with you what they believe  
10 the evidence in the case has shown.

11                  So at this time, I'm going to call on you,  
12 Ms. Kraft, to deliver your closing argument.

13                  MS. KRAFT: Thank you, Your Honor.

14                  May it please the Court, Counsel, ladies and  
15 gentlemen of the jury. This has been a short trial, but  
16 it's an important trial. And as the Court told you when we  
17 began, we all have a role in this case. The Court's role is  
18 to oversee the trial. It's to be the arbiter of the law.

19                  Ms. Moreno-Taxman and I represent the Government.  
20 It's our job to bring the evidence that comprises the  
21 charges against Mr. Muresanu to you, Mr. Uller's job is to  
22 represent his interests under the constitution of the United  
23 States, and your job is to determine the facts. And we have  
24 now reached the point in this trial where our jobs are  
25 almost finished, and the entire responsibility for this case

1 will be yours, and you will go back to the jury room, and  
2 you will deliberate on the evidence that you've heard over  
3 the last day-and-a-half, or day and maybe an hour, and apply  
4 the instructions that the Court has given you and reach a  
5 determination, reach a verdict as to the four counts that  
6 have been charged against Mr. Muresanu.

7 Now, at the beginning of the trial, the judge told  
8 you -- and he's told you again in his instructions -- that  
9 the defendant, in a criminal case, is presumed innocent. He  
10 didn't say he is innocent, and he doesn't say he's innocent  
11 because, of course, a defendant who has done criminal  
12 offenses has done those offenses before he ever comes to  
13 court and sits at that table. The presumption of innocence  
14 is something that protects a defendant in our system of law  
15 until and unless the Government brings forth the evidence to  
16 convince 12 people, 12 peers that he is, in fact, guilty of  
17 those offenses.

18 Now, in this case, you might be saying, "Well,  
19 we've heard so much evidence."

20 Ms. Moreno-Taxman told you in her opening remarks  
21 to you that the evidence would be overwhelming, and I submit  
22 to you that it was overwhelming. The defendant confessed  
23 multiple times to the offenses that he's charged with. The  
24 defendant is captured on video surveillance at the Kwik Trip  
25 store in Oshkosh using the counterfeit cards. The defendant

1       is captured in video surveillance, and we saw clips of that  
2       at the ATM machines at the First Tennessee banks in  
3       Nashville putting skimmers and pinhole cameras on those  
4       ATMs. So with all this evidence, you might be saying, "But  
5       why are we even here? Why do we have to decide this case  
6       against the defendant?"

7                  You do because it's his constitutional right to  
8       have a trial, and he cannot be held responsible for those  
9       crimes until and unless the Government brings the evidence  
10      to court with a jury like you hears the evidence and makes a  
11      determination. So that's why we're here today, and it's  
12      important that you have that job. It's important that every  
13      person who is charged with a crime in our country has the  
14      right to have the evidence brought to court and decided by a  
15      jury of his peers.

16                  So with that said, let me talk about the evidence.  
17       Now, the defendant is charged with four offenses. The judge  
18       has told you that. You've heard the jury instructions. The  
19       first one is that he's charged with, on or about May 15<sup>th</sup>  
20       and May 16<sup>th</sup>, with intent to defraud, knowingly possessing  
21       15 or more counterfeit and unauthorized access devices.

22                  Now, we know that -- I have some little slides  
23       here -- he's also charged in Counts 2, 3, and 4 with  
24       aggravated identity theft. He's charged with during and in  
25       relation to that felony violation of possession of 15 or

1 more access devices, knowingly possessing, using --  
2 possessing or using without lawful authority a means of  
3 identification of an individual knowing that said means of  
4 identification belonged to another person.

5                   And there are three victims in those offenses. We  
6 met them all in court. Matt Palmieri is the victim whose  
7 identification was possessed by the defendant in  
8 relationship to Count 2. Shawna Edwards is the victim whose  
9 identification was possessed by the defendant in relation to  
10 Count 3. And Erika Borg was the victim whose identification  
11 was possessed in relationship to Count 4.

12                  Now, the possession of multiple or unauthorized  
13 counterfeit access devices has multiple elements as the  
14 Court said. They're in your jury instructions. When you go  
15 back to deliberate, you can go back and refer to them. The  
16 defendant has to knowingly possess 15 or more access  
17 devices.

18                  Well, in this case, we have 80 access devices, 80  
19 access devices on his person at the time that he is arrested  
20 in Oshkosh, some of them wrapped with receipts that he has  
21 used in relationship to those cards, receipts that he has  
22 either used to check balances on the cards or has used to  
23 withdraw money from the accounts that are encrypted on the  
24 magnetic strip on the back of the cards; that the devices  
25 were counterfeit; that the defendant possessed those devices

1       with intent to defraud; and that the defendant's conduct  
2       affected interstate or foreign commerce.

3                   So we know now, and we don't have -- I don't think  
4       I have to spend a lot of time saying that an access device  
5       is anything that allows someone to get or transfer money.  
6       We know that credit cards, debit cards, gift cards are all  
7       access devices, and they are access devices because, well,  
8       for two reasons: They have a number imprinted or embossed  
9       on the front, and also they have an account number encoded  
10      on the back. These are front and back of one of the gift  
11      cards that actually were recovered in this case. Credit  
12      cards and debit cards and gift cards with magnetic strips  
13      are all access devices within the meaning of the federal  
14      statutes.

15                  Now, a counterfeit access device -- and we know  
16      this from Agent Hoalcraft, we know it from  
17      Detective Milotzky -- is one in which the access device has  
18      been altered to become something other than what it  
19      originally was.

20                  Interstate or foreign commerce is the last element  
21      of this offense. It requires any kind of communication or  
22      connection between activity in one state or another. And  
23      you're not going to have any trouble finding that the  
24      defendant's conduct affected interstate commerce. We know  
25      that he was part of a group that was making these devices,

1       that he was putting ATM skimmers and pinhole cameras on ATM  
2       machines in Nashville, and according to his own statement,  
3       in Atlanta and I believe Kansas City. He was going to be on  
4       his way to Louisville next. But he was one of the people  
5       who, at the, I guess, requirement of Vito, his boss, was  
6       doing what he needed to do in order to get the data from  
7       other people's accounts so that it could be encoded on the  
8       access devices, the counterfeit access devices that time he  
9       was going to ultimately use. He brought those cards to  
10      Wisconsin.

11           We had some debit receipts that I think were  
12       recovered from both him and his associate Florin that showed  
13       that some of these cards had been used at ATMs in Illinois  
14       on their trip up to Wisconsin. They had both checked  
15       balances and withdrawn money from cards that were in their  
16       possession.

17           So let's talk about the evidence. This  
18       investigation, for our purposes, began on May 16<sup>th</sup> of  
19       2018. It began at the Motel 6 in Oshkosh, Wisconsin. It  
20       began when one of the detectives received information that  
21       there was a white van with Tennessee plates at the Motel 6,  
22       and that individuals there were involved in suspicious  
23       activity, suspicious activity that obviously the detectives  
24       cared about because they set up a surveillance and were  
25       there for quite some time. If you remember, I think they

1       started about 5-ish, and they surveilled the group of people  
2       that were at that motel until almost 8:00 that night when  
3       they followed that white van, the white van with Tennessee  
4       plates began to move.

5                 Now, we also know that this conduct didn't begin  
6       on May 16<sup>th</sup> of 2018, it began in January, at least as far  
7       as we know with respect to this defendant when he was  
8       putting those ATM skimmers on the banks at First Tennessee.  
9       And we know that because Brandi Woodard, who is the risk  
10      manager for Tennessee banks, came to court, and she told you  
11      that she had discovered that multiple ATM skimmers with  
12      pinhole cameras had been placed on devices that were --  
13      placed on ATMs that were part of the banking community that  
14      she was responsible for. And she recovered several of those  
15      and video surveillance pictures of the defendant putting  
16      them on, and that was in January. I think the first date  
17      that she testified was January 13<sup>th</sup>, putting them on,  
18      removing them January 15<sup>th</sup>. Putting them on  
19      January 24<sup>th</sup>, removing them January 25<sup>th</sup>. Something  
20      like those dates. The dates are on the pictures, but you  
21      should use your own recollection if you remember the dates  
22      different than I. But I guess my point is that this conduct  
23      goes way back to January of this year, and the defendant  
24      talked about the conduct in his statements to law  
25      enforcement. He said, you know, "In Nashville. I started

1       in Nashville. I was putting the skimmers on. I was taking  
2 them off. I was giving them to Vito. He created the cards.  
3 He took the data. I knew it was other people's information.  
4 I knew it was other people's accounts because when he gave  
5 me the cards back, I knew that my job was to go and get  
6 money out of those other people's accounts. It was to go  
7 and use the cards that I had helped create in order to get  
8 money from other people's accounts."

9                  And we know there were numerous -- there's the  
10 Kwik Trip. There were numerous receipts that were recovered  
11 in this.

12                 I'm going too fast, and I'm getting a little cold,  
13 so I guess I'm not articulating as well as I might.

14                 Detective Hinke testified that in the receipts  
15 that she recovered, if you'll recall, and they were from the  
16 defendant, there was one account where he checked an account  
17 balance that had something like \$8,000 in it and another one  
18 that had something like \$6,000 in it.

19                 We also saw some receipts that were used -- that  
20 were the result of the use of cards that Florin had at ATM  
21 machines in Illinois, and those showed a balance check and  
22 then a withdraw, and a balance check and then a withdraw.

23                 So we know that these cards were actively being  
24 used by the defendant and his associate and that he well  
25 knew that the information on the back of the card, the

1 information that had been encoded on the magnetic strip was,  
2 indeed, the information that related to other people's bank  
3 accounts.

4 Now, this is the Kwik Trip that the detectives  
5 testified that they followed the white van to on May 16<sup>th</sup>,  
6 and there in the left-hand side you see the defendant and an  
7 ATM machine, and then you see the defendant and his other  
8 two -- or one of his other two associates, I believe that's  
9 Florin, and Detective Hinke at those ATMs.

10 If you recall, Detective Hinke stated that when  
11 they got to the Kwik Trip, her partner, Detective Artus and  
12 her supervisor, Sergeant Ansell, were parked across the  
13 street. And they told you that, too, doing just  
14 observation.

15 And she took off her gun, her cuffs, her badge,  
16 and went in just to see what these guys were doing because  
17 she was suspicious based on the information that she had.  
18 At first she didn't see them, but then after a few minutes,  
19 she saw these two men and a third juvenile come out of the  
20 bathroom and approach the ATM machines and surround the ATM  
21 machines, and she saw the defendant. He had a little  
22 satchel, and he looked like he was putting multiple cards in  
23 doing a transaction, putting another card in doing another  
24 transaction, putting another card in. That certainly was  
25 suspicious to her. So she went to get a little closer look.

1       She got out her own ATM card. I think she told you she was  
2       a little afraid to put it in because she wasn't sure what  
3       would happen when she did what was on that machine, but she  
4       got close enough to see exactly what they were doing. Then  
5       she called her partner, Detective Artus, and said, "I think  
6       I have enough information that I can stop and ask them what  
7       they're doing."

8                   So she went back out, put her gun on, badge on,  
9       cuffs back on. And they came across the street -- "they"  
10      being Sergeant Ansell and Detective Artus -- to assist or  
11      whatever might happen next. And as she approached these  
12      three young men coming out of the Kwik Trip, they all ran.  
13      Well, that certainly was even more suspicious behavior. And  
14      she followed the defendant. And Detective Artus and  
15      Detective Ansell were able to take into custody the other  
16      two young men, Florin and the other juvenile. And she  
17      arrested Mr. Muresanu behind the Kwik Trip after he tried to  
18      scale the wrought iron fence there. She was assisted by a  
19      citizen, a good citizen, a Good Samaritan, and  
20      Sergeant Ansell went to help. And he had, when they  
21      searched Mr. Muresanu, these 80 access device cards on them.  
22      And his associate, Florin, had an additional 12 access  
23      device cards and two more in his wallet.

24                  Now, the defendant is responsible not only for the  
25      access devices that were on his person but also for those

1       that were on Florin. Florin was -- they came together, as  
2 you recall, in a van that the defendant claims was purchased  
3 by Florin in Nashville. They were traveling together  
4 through Illinois to come to Wisconsin, and the defendant is  
5 charged under, not just the specific statutory language that  
6 constitutes the offenses, he's charged with 18 U.S.C.,  
7 Section 2, which provides that any person who knowingly  
8 aids, counsels, commands, induces, or procures the  
9 commission of an offense may be found guilty of the offense  
10 if he knowingly participated in the activity and tried to  
11 make it succeed.

12           These two guys were working together. This was  
13 joint activity. He's also responsible for Florin's part.  
14 And he told us himself in his statement that he and Florin  
15 were essentially one in the same in this activity. This is  
16 just some citation or quotations from one of the interviews.

17           Law enforcement: "Okay. And who else tonight was  
18 involved with the skimming and collecting the money and  
19 using the cards?

20           Mr. Muresanu: "Me and Florin."

21           Law enforcement: "You and Florin. Anybody else?"

22           Mr. Muresanu: "No, nobody else."

23           Later on, law enforcement: "Okay. Florin has  
24 done other cities as well as you have?"

25           Mr. Muresanu: "He has done other cities like I

1 have. The first time when I came to Nashville, it was just  
2 me, myself.

3 Law enforcement: "Okay. Okay.

4 Mr. Muresanu: "I just did a few devices.

5 Law enforcement: "Okay. Okay.

6 Mr. Muresanu: "Then Florin and I came, but I  
7 don't think Florin -- Florin had set anything in Nashville  
8 when he came first. The second time we came back to  
9 Nashville, he placed his own ATM devices too.

10 Law enforcement: "Okay. So he placed devices,  
11 Florin did, and yourself? So you and Florin placed them the  
12 second time?

13 Mr. Muresanu: "Yes, I helped him. Yes."

14 I submit to you that Mr. Muresanu was grooming his  
15 cousin Florin to get into this business. He is responsible  
16 also for the 14 cards that were found on Florin.

17 And then there were six more access devices in the  
18 bathroom. And if you recall Mr. Muresanu's statement during  
19 one of the interviews, he said, "I had maybe 30 or 40 over  
20 that. Maybe I had 100. Some of them I got rid of because  
21 they didn't work anymore. They didn't work anymore."

22 Well, this card that I have on this slide here is  
23 one of the cards that was recovered from the bathroom. And  
24 if you remember when Sergeant Ansell was on the stand, I had  
25 him circle this card. And so the exhibit -- I don't recall

1       the exhibit. I think it was 4B -- number that is the  
2 photograph of that, and you'll see Sergeant Ansell's circles  
3 on that card.

4                 This card -- and we learned this from  
5 Detective Milotzky's analysis of the cards, his comparison  
6 of the cards -- this card, with the numbers that end in  
7 3132, is really a debit card that ends in 3654. It's a  
8 debit card that was issued by the Bank of America National  
9 Association, and it's the card that the defendant used to  
10 purchase the items that he purchased at the Kwik Trip at  
11 midnight, shortly after midnight on May 16<sup>th</sup>.

12               Remember the video of him putting all of those  
13 things on the counter going back several times? And he made  
14 the Kwik Trip receipts -- or the transaction records that we  
15 obtained from Kwik Trip showed that this is the card. You  
16 can see at the bottom there. The last four digits are 3654  
17 that he used to make all those purchases until the card was  
18 declined. And after the card was declined, he ditched it in  
19 the bathroom along with the other cards that he felt didn't  
20 work anymore.

21               So how did we figure out where all of these cards  
22 belonged, all of these 100 cards, the 80 on the defendant,  
23 the 14 on Mr. Florin, the 6 in the bathroom? We did that  
24 because Detective Milotzky is trained in the investigation  
25 of various kinds of white collar crime, including ATM

1 skimming. And he has a software program that he used to  
2 create the chart that is Exhibit No. 25.

3 He testified that he ran each of these cards. He  
4 swiped each one through the device that's connected to his  
5 computer, and it gave him the number that was actually  
6 encoded on the back of each of these cards. And  
7 Agent Hoalcraft testified that he went and sat with  
8 Detective Milotzky when he did this, and it takes about  
9 three hours to do this, to scan each card and then to look  
10 at the number on the front and determine whether or not  
11 that's the same number that's encoded on the back and then  
12 type in that other number, and what he discovered was for  
13 all 100 cards, there wasn't a single one that wasn't  
14 counterfeit. Every single card that was recovered from the  
15 defendant, the 80 from his person, every single card that  
16 was recovered from Florin, the 14, and every single card  
17 that was recovered from the bathroom were all counterfeit  
18 cards. Each card had a different number encoded on it than  
19 the card that the number that was written on the front of  
20 the card. So all 100 were counterfeit.

21 And we know that the defendant was involved in the  
22 creation of these cards by placing the skimmer and the  
23 pinhole cameras on the Parkway Commons on Columbia Avenue  
24 and removing them and giving them to his boss, I guess. And  
25 we know that because he confesses, because he tells us

1 multiple times, "I did this. Vito directed me to do this.  
2 There were other groups that were doing it too."

3 And why did he do it? Did he do it because Vito  
4 forced him to? I don't think so.

5 He told us that he got 25% of everything that he  
6 took out of other people's bank accounts by going around  
7 with these counterfeit access cards and putting them in ATMs  
8 and using the pin numbers that had been captured by the  
9 pinhole cameras and matched with the data that was collected  
10 each time the ATM skimmer was capturing data.

11 He went around, and he collected money from ATMs.  
12 And he told you that the best he ever did, the best that he  
13 had, the batch that he had netted \$30,000. And what's a  
14 quarter of \$30,000? What? 7, \$8,000? Pretty good work for  
15 just putting cards in a machine.

16 He knew exactly what he was doing, and he was  
17 doing it in order to make money.

18 Now, this is an example, and this probably wasn't  
19 my best, I guess, performance during this trial when I was  
20 trying to have Detective Milotzky show us what was on real  
21 receipts so that we could compare them with what was on the  
22 cards that he had recovered. This example was from an ATM  
23 machine in O'Fallon, Illinois, and it shows that there was a  
24 balance check showing that these people had \$332.74  
25 available in their bank account and then a withdraw of 300

1 plus a terminal fee of \$303, the same day. This is one of  
2 the receipts actually that was in Florin's pocket at the  
3 time he was arrested. They were using these cards to get  
4 money from other people's accounts.

5 And this is -- what is this? This is another --  
6 this is the same card. Here we have the card number -- the  
7 actual card number that came up when it was swiped ended  
8 with 0708. Okay? That's not the card that they had in  
9 their pocket at the time that they were at the station. The  
10 card that they had in their pocket ended in 4255, but we  
11 know that it's the same card because Detective Milotzky ran  
12 that card through a software program, saw what the actual  
13 number on the back of that card was and saw that it was a  
14 counterfeit card.

15 So the final element with respect to Count 1 is  
16 whether or not this affected interstate commerce.

17 This activity started in Nashville. It came  
18 through Illinois. It came to Wisconsin. We know that he  
19 didn't make these cards in Wisconsin. He told us in his  
20 statement that, "We were done with the skimmers a long time  
21 ago. We did the skimming four, five months ago, and now  
22 we're using the cards that were produced from the skimming."

23 The cards were brought from another state. All of  
24 the cards were used to access accounts of account holders  
25 at, essentially, most of them nationally known banks: JP

1 Morgan Chase, Bank of America, U.S. Bank. Certainly there's  
2 no question that this activity affected interstate commerce.

3 So the other charges, the three remaining charges  
4 are the aggravated identity theft. And in order to prove  
5 that, the Government was required to show that the defendant  
6 committed the felony offense of possession of 15 or more  
7 access devices with intent to defraud as charged in Count 1.  
8 And I submit to you, ladies and gentlemen, that the evidence  
9 that he did is overwhelming.

10 The second element is that during and in relation  
11 to that offense, the defendant knowingly possessed a means  
12 of identification. He possessed 80 means of identification,  
13 but 3 of those were from the victims that you've heard from  
14 in court. That the defendant did so without authority; that  
15 the means of identification belonged to another person; and  
16 that the defendant knew the means of identification belonged  
17 to another person.

18 The magnetic strip on the back of a debit card or  
19 a credit card is a means of identification within the  
20 meaning of federal law because it provides bank account  
21 information for a real person, for an actual person.

22 One of the access devices that was recovered from  
23 the 80 that the defendant had in his possession on  
24 May 16<sup>th</sup> was an access device that had encoded on the back  
25 the real bank information of Matthew Palmieri. And you

1 heard from Matthew in court. He came here. He told you  
2 that he had been notified by his bank, notified that there  
3 was something wrong, that his card had been used, or there  
4 was something going on with his card, and so he had to  
5 cancel it. That is the vanilla card that appears to end  
6 with the digits 6370. The real numbers on his bank account  
7 were 1014. That's Count 2 of the indictment.

8                   He also had on his possession, in his possession,  
9 a card which was encoded with the account number of  
10 Shawna Edwards. She too came to court and told you that she  
11 had not given permission, didn't know Mr. Muresanu, she had  
12 not given him permission to take her bank account  
13 information and use it, to have it encoded on another card  
14 and use it. In fact, she brought with her the real  
15 card that had -- she still had in her possession that she  
16 had to cancel because this offense had occurred. And,  
17 you know, that's one of the real problems with these kinds  
18 of crimes, ladies and gentlemen. People don't even know or  
19 may not even know that their account information has been  
20 stolen until the money is gone.

21                   Ms. Edwards still had her card in her purse at the  
22 time that money -- I can't recall if she said that money had  
23 been withdrawn, but certainly the defendant had her card and  
24 the possibility of using her card at the time he was  
25 arrested, and that's Count 3.

1                   And Count 4 relates to the account information up  
2 here on the board. And she also came here and told you that  
3 she didn't know the defendant, and she had not given him  
4 permission to use the encoded information that would allow  
5 him to access her bank account, and the card that the  
6 defendant had was 4424, but her actual bank account ended in  
7 1829.

8                   That's Count 4.

9                   Now, we could have charged, I guess, 42 counts of  
10 aggravated identity theft because, as Agent Hoalcraft told  
11 you, we subpoenaed bank records based on the chart that  
12 Agent Milotzky, Detective Milotzky, had prepared that reveal  
13 the real account information that was encoded on the 100  
14 cards. And Agent Hoalcraft subpoenaed banks that produced  
15 account information for 42 of those cards. All 42 of those  
16 cards were cards that had -- all 42 of the encoded  
17 information on those cards was information that belonged to  
18 real people, that belonged to real people who had real bank  
19 accounts that had been compromised by the defendant's  
20 conduct. He's not charged with 42. He's charged with 3.

21                   But, ladies and gentlemen, when Ms. Moreno-Taxman  
22 said at the beginning of this trial that the evidence was  
23 overwhelming, she was right.

24                   I think that after having heard everything that  
25 you've heard during the course of the trial, you can't help

1 but believe that the defendant is guilty of each of these  
2 accounts, that not only is there not a reasonable doubt  
3 about his guilt, there's no doubt. And so your verdict in  
4 this case should be guilty as to Count 1, the knowing  
5 possession of 15 or more access devices with intent to  
6 defraud and affecting interstate commerce.

7 Count 2, guilty of aggravated identity theft  
8 involving the information that belongs to Matthew Palmieri.

9 Guilty of Count 3, aggravated identity theft  
10 involving the bank information that belongs to  
11 Shawna Edwards.

12 And guilty of Count 4, aggravated identity theft  
13 as a result of the information that belongs to Erika Borg.

14 So when you go back to the jury room, and you look  
15 at the instructions that the Court has given you, and you  
16 think about the evidence -- I know that some of you have  
17 taken notes, and I know that you also have been a very  
18 attentive jury -- I submit that the only verdicts that you  
19 can come to are guilty as to all four of these offenses, and  
20 those are the verdicts that I ask you to return today.

21 Thank you.

22 THE COURT: Thank you, Ms. Kraft.

23 Mr. Uller.

24 MR. ULLER: I understand that at various points  
25 over the last couple days you sat there and wondered to

1 yourself what you're doing here. I can't blame you for  
2 that. Undeniable truth here is that Mr. Muresanu is not an  
3 innocent person. You watched the same trial I did. You saw  
4 him on video using the cards. You heard him confess to  
5 using the cards. You saw him down in Tennessee putting the  
6 devices onto the ATM machines. You saw him run from  
7 Detective Hinke.

8 I don't expect you to like Mr. Muresanu;  
9 unfortunately, that's what the vast majority of this trial  
10 has been about, an attempt to distract you from the real  
11 issues in this case to try to make you dislike Mr. Muresanu.

12 I'm a federal public defender. I represent people  
13 who have been charged with crimes, usually pretty serious  
14 federal crimes who can't afford a lawyer. I think I have  
15 one of the best jobs in the world. I get to help people,  
16 people who a lot of other people don't think even deserve to  
17 be helped, and I get to help them in the most trying of  
18 times in their lives when the weight of the United States of  
19 America is imposing its will against a single individual.  
20 There's no nobility in those forces I go up against.  
21 Prosecutors, police officers, special agents, these are  
22 people who have devoted their lives to public service.  
23 There's nobility. I often disagree with them, but the  
24 overwhelming majority of them do what they do because they  
25 think what they're doing is the right thing to do. At the

1 same time, that belief that they're doing the right thing  
2 can create a sense of cynicism. Everything can become  
3 either black or white, good or bad, right or wrong, guilty  
4 or innocent. The reality is oftentimes in the middle.  
5 Sometimes being wrong or being bad isn't being guilty.

6 Again, the majority of the evidence presented in  
7 this case was not at issue. It wasn't in dispute. You  
8 didn't hear me aggressively cross-examining witnesses,  
9 trying to discredit people or undermine the credibility of  
10 witnesses. This was an attempt to make Mr. Muresanu look  
11 bad. Why else would the Government introduce the same  
12 statement he made four separate times to four separate  
13 individuals where he repeats the same statement he gave over  
14 and over again?

15 Why would they have multiple witnesses telling you  
16 what they observed Mr. Muresanu doing in the gas station  
17 when you saw on video clear as day what he was doing?

18 Why else would they introduce evidence of a pair  
19 of sneakers either him or his cousin bought, an expensive  
20 pair of probably really ugly, really gaudy sneakers?

21 Why would they repeat the testimony over and over  
22 again of what ATM skimming is?

23 Why would they continue to refer to the other two  
24 individuals as juveniles?

25 Focus and highlight the receipts where one of

1       them, presumably Florin, checked a balance and had just over  
2       \$300 in the account and then a few minutes thereafter made a  
3       \$300 withdraw?

4                 It looks bad. I agree. But those are  
5       distractions from the issues in this case that you really  
6       have to answer. And there are two issues in this case that  
7       really matter: The first one is whether those cards, that  
8       stack of cards there, are counterfeit.

9                 Now, I know you may assume that they're  
10      counterfeit. We don't convict people of crimes based on  
11      assumptions. We convict them based on proof. It's the  
12      Government's job to prove that those cards are not real, to  
13      prove that the information on the back of those cards is  
14      different than the information on the front of those cards.  
15      And, yeah, for some of them they did. The cards that they  
16      have receipts for where either Mr. Muresanu or his cousin  
17      checked the balance, did a withdraw, the information on that  
18      receipt reveals that the contents of that card on that  
19      magnetic stripe are different than the contents on the front  
20      of the card. But the way the Government is trying to prove  
21      this overall case, to prove that those cards are  
22      counterfeit, is through the testimony of Detective Milotzky  
23      from the Wauwatosa Police Department. And Judge Stadtmauer  
24      told you in the instructions that there's some witnesses who  
25      are -- we call them expert witnesses, and those are

1       witnesses -- this is on page 8 of your instructions --  
2       witnesses who, by education and experience, have become  
3       expert in some art, science, profession, or calling, may  
4       state opinions as to the matters which they profess to be an  
5       expert.

6              Detective Milotzky was offering an expert opinion  
7       that those devices are counterfeit. Call me crazy, but if  
8       we're going to determine whether someone is guilty based on  
9       what's in a report, an expert witness's report, shouldn't  
10      the person who generates that report and using the devices  
11      understand how it works?

12             Detective Milotzky gave us a really good analogy.  
13      He compared it to the television, and he knows how his TV  
14      works because he can use his remote control to turn it on.

15             I want the person who fixes my TV to know how my  
16      TV works. I don't expect Detective Milotzky to know how my  
17      TV works, but I expect Detective Milotzky to know how this  
18      card reader works and the software program works.

19             During the trial, we had some technical  
20      difficulties. I recall Judge Stadtmueller telling you that  
21      technology is a great thing when it works. We all know  
22      things don't always work. I would expect Detective Milotzky  
23      to be able to stand up here and tell you why the cards -- or  
24      the information that his report generated is the actual  
25      information contained on the back of these cards. That's

1 why he was here. That's why he is one of the few people in  
2 the area who is qualified to use this device.

3 Now, the Secret Service is not some podunk, small  
4 town law enforcement agency. The Secret Service is one of  
5 the most significant and powerful law enforcement agencies  
6 in the country. They protect our president. They oversee  
7 the financial -- insure the financial integrity of our  
8 systems, and they're using this device through  
9 Detective Milotzky, and he doesn't know how it works, why it  
10 works.

11 I want you to ask yourself: Are you comfortable  
12 convicting someone and finding someone guilty based on the  
13 assumption that that device works properly? I'm not.

14 So we have to rely on those receipts. And I agree  
15 that there are receipts that reveal that some of those  
16 devices that Mr. Muresanu and the other individual possessed  
17 were counterfeit. But there's not 15 of them, and the  
18 Government has to demonstrate that there are 15 or more of  
19 those devices.

20 Now, if they haven't proven Count 1, the  
21 possession of 15 or more access devices, then you don't even  
22 have to answer questions -- the verdicts as to Counts 2, 3,  
23 and 4. The Government has to prove Count 1 in order for you  
24 to be convinced that he's guilty of the remaining counts,  
25 which leads me to the second question in this case, which

1       is: Did Mr. Muresanu knowingly use, possess, or transfer  
2       those 80 cards that were in his satchel, in his bag?

3                  And we have the same problems with those three  
4       cards that we have with the 80 or 100 other cards, at least  
5       the vast majority of them. There's been no evidence  
6       presented in this case that those three cards were ever used  
7       by Mr. Muresanu. There are no receipts bearing either  
8       Ms. Edwards, Ms. Borg, or Mr. Palmieri's account  
9       information.

10                 There's other problems, too. Mr. Muresanu gave  
11       this statement over and over again. Why they felt the need  
12       to interview him four times and obtain the same statement is  
13       beyond me, but he was pretty clear. He had a boss, right?  
14       He's a young guy. He turned 18 a couple weeks before this  
15       arrest. That doesn't negate his responsibility for what he  
16       was doing. I think you might infer that his boss was maybe  
17       preying on younger people. That doesn't matter in this  
18       case. But this boss of his, Vito, told him where to go,  
19       gave him the devices, told him which ATMs to put them on.

20                 Mr. Muresanu isn't the person who loaded the  
21       information onto the actual cards. He didn't know which  
22       cards he was getting. The evidence is pretty clear that  
23       Vito just would give Mr. Muresanu a stack of cards and tell  
24       him to go -- you know, "Go withdraw money. Get me the money  
25       that you withdraw."

1                   The Government has presented no evidence in this  
2 case that Mr. Muresanu knew in his collection of cards that  
3 Vito gave him were the three cards at issue in Counts 2, 3,  
4 and 4.

5                   The law doesn't prohibit all possession. The law  
6 prohibits the knowing possession of things of items that are  
7 contraband, and Mr. Muresanu, there's no evidence here he  
8 actually used those cards.

9                   So you can ask yourself: How did he know that  
10 those cards were in this stack that he received if he didn't  
11 use them?

12                  So those are really the two questions in this  
13 case. And if you think that the Government has proven,  
14 again, proven with proof beyond a reasonable doubt that  
15 Mr. Muresanu committed those crimes, then you should find  
16 him guilty.

17                  If, on the other hand, you're of the belief that  
18 the Government hasn't proven -- even if you believe that  
19 he's probably guilty, even if you believe he's more than  
20 likely guilty, even if you're convinced that he is guilty,  
21 but the Government hasn't proven it, then you must find him  
22 not guilty.

23                  I'm not going to stand here and ask you to find  
24 him not guilty. I'm not going to stand here and tell you  
25 you should find him not guilty. I'm going to tell you to do

1 what the judge has instructed you to do, which is follow the  
2 law, follow these instructions, put your understandable  
3 contempt, dislike, anger about Mr. Muresanu aside and answer  
4 those two questions: Did the Government prove that these  
5 cards are counterfeit, and did they prove that Mr. Muresanu  
6 knew those cards were in that bag?

7 Thank you very much for your time.

8 THE COURT: Thank you, Mr. Uller.

9 Ms. Moreno-Taxman.

10 MS. MORENO-TAXMAN: Thank you, Your Honor.

11 Good afternoon. I think it's afternoon.

12 Thank you, Your Honor, Defense counsel, Counsel.

13 The answer to the Defense attorney's questions are  
14 "yes" and "yes." Of course he knew that he was possessing  
15 those counterfeit cards. That's what he was there for. He  
16 didn't come to Wisconsin to go and get a Packer hat. He  
17 didn't come to Wisconsin to go and visit the Brewers  
18 stadium. He didn't even come to Wisconsin to watch a game.  
19 He came here for the sole, exclusive purpose of using those  
20 cards, which belonged to other people, to make money for  
21 himself and others. Not money that he worked for, not money  
22 that he earned, but numbers that he stole and then used in  
23 Wisconsin.

24 You heard in his own words that he had just gotten  
25 to Wisconsin, and he was going through to the next stop,

1 going to a different state. This was just a cha-ching,  
2 cha-ching, cha-ching for him. This was the place where he  
3 could get money in and out quickly. And, really, when you  
4 think about it in this case, if it wasn't for the Oshkosh  
5 Police Department and their determination sitting for four  
6 hours in a Motel 6 parking lot waiting, right? I mean,  
7 that's good law enforcement. This is not overexaggerated  
8 law enforcement. This is not law enforcement that is taking  
9 things out of proportion. They're doing exactly what we  
10 want them to do. They went, they looked, they followed the  
11 car.

12 You heard that they went in and saw what he was  
13 doing and from that started to -- start an arrest which he  
14 not only was trying to leave Wisconsin, he was planning to  
15 leave that scene, right? He wasn't going to stay around  
16 because he knew he was in a car with Tennessee plates,  
17 right?

18 Who was ever going to find this guy? His best bet  
19 was to run, and running is evidence of guilt. Okay? So  
20 that was what he did. That's how he handled the situation.

21 And then what happened is law enforcement took  
22 this seriously, the same way all of us take identity theft  
23 seriously, and they went through and figured out exactly  
24 what he was doing. And they have the right to interview  
25 him. Defense attorney is telling you they didn't ask him

1       this or he didn't say that. He has said in his statements  
2       in so many words over and over again that "I knew" --  
3       remember, he even corrects. He says, "No, no. They're not  
4       credit cards, they're gift cards, and it's other people's  
5       information that's on this."

6               Those are his words. And he goes on and on and  
7       talked about how this worked. And each statement gave you a  
8       little bit more information about what happened and how it  
9       worked, what states they went to, which one he put the  
10      devices in.

11               So I think what the Defense attorney wants you to  
12       believe is that people should just say "I did it," and then  
13       law enforcement should stop.

14               Well, the Oshkosh Police Department and the United  
15       States Secret Service are better than that. They want to  
16       make sure they've got the right person and the right  
17       information, and so they got more information from them.

18               They would've never been able to figure out that  
19       he was the guy in Tennessee if they hadn't followed up,  
20       right? That didn't fall on their lap. It's just  
21       coincidence that two of the three victims are from  
22       Tennessee, and he was in Tennessee putting in the skimmers?

23               Do you remember, those witnesses, those victims  
24       had never even been to Wisconsin, just their identification,  
25       and their identification taken in one of the most invasive

1 kinds of ways because you don't know that it happened to  
2 you. Your identity is taken, and you think you've protected  
3 yourself. It's kind of like a burglary of yourself, your  
4 identity.

5 MR. ULLER: Objection, Your Honor.

6 THE COURT: This is closing argument. The jury is  
7 entitled to draw on all inferences from the facts.

8 The objection is overruled.

9 MS. MORENO-TAXMAN: You saw that one of the  
10 victims didn't even know that her account had been taken  
11 except for law enforcement letting her know, and I think  
12 that's true of most people. Most people find out from their  
13 banks that their identity has been stolen. It's not as if  
14 Mr. Muresanu comes to them and says, "Hey, by the way, all  
15 80 or 100 of you, I've stolen your identity."

16 It's only when they're caught in the act, like he  
17 was here, that we can identify them or when they use them.  
18 That's how we know that people's identities are stolen.  
19 It's exactly like what happened in this case; police doing  
20 their job as they should.

21 Now, somehow the Defense wants you to think that  
22 there's some mystery to this magnetic reader of cards. I  
23 submit to you that none of us know what is said in our  
24 magnetic strip, right? What's in our magnetic strip is  
25 written in a magnetic strip. The only thing that could read

1       that is a magnetic strip reader, but we all know that when  
2       it goes in the machine, and we put in our pin, we get our  
3       money out. The same way this defendant knew that when he  
4       took people's codes, their magnetic strip he would put them  
5       in and put in the pin, he got their money out.

6                   So there is no mystery here. If you want to call  
7       it a mystery, let's solve this mystery. The defendant did  
8       it. He did it again in front of a Secret Service agent, and  
9       guess what? They totally matched, right? Twice. Is that  
10      coincidence? The exact same numbers coming up.

11                  Then what happens? The law enforcement officer  
12      takes those accounts which we now believe are counterfeit,  
13      right? They don't match the front or the back. Guess what?  
14      Of the banks he subpoenaed, he gets back 42 banks saying,  
15      "Yeah, there's a real person with that account number that's  
16      on that magnetic strip."

17                  There's no mystery here.

18                  And then the defendant himself told you -- we  
19      would not have even had to show you all that, but, you know,  
20      who can take his word alone? We did the investigation to  
21      prove up every element of this crime because that's our  
22      burden.

23                  I don't think anyone here is trying to make the  
24      defendant look bad. I don't even know where that comes  
25      from. And the Defense attorney says to us that reality is

1 somewhere in the middle of this case. It is nowhere in the  
2 middle. The scales of justice are like this (indicating).  
3 He is guilty. The evidence has proven him guilty of each  
4 count beyond a reasonable doubt.

5 I don't know if you've noticed, but every time you  
6 come into this courtroom, the bailiff says, "All rise," and  
7 all of us in this courtroom, we all stand up for you. And  
8 we don't stand up for you because we have a relationship  
9 with you or that we know you, we stand up for you because  
10 you represent justice, you represent the truth, and we honor  
11 you by standing for you because you represent the truth.  
12 And with that comes the responsibility, comes a  
13 responsibility of being fact finders and finding out what  
14 happened here.

15 We have provided you with the evidence and the  
16 facts, and we respect your verdict, and we expect your  
17 verdict to be guilty on every count.

18 Thank you for your service.

19 THE COURT: Thank you, Ms. Moreno-Taxman.

20 Members of the jury, I now invite you to return to  
21 your instruction materials for the concluding instructions  
22 of the Court found on page 19.

23 Members of the jury, this case is ready to be  
24 formally submitted to you for your serious deliberation.  
25 You will consider the case fairly, honestly, impartially,

1 and in light of reason and common sense. Give the verdict  
2 your careful and conscientious consideration. In answering  
3 each question, free your minds of all feelings of sympathy,  
4 bias, or prejudice.

5           This case has taken a great deal of time and  
6 effort to prepare and try. There is no reason to think that  
7 it could be better tried or that another jury is better  
8 qualified to decide it. It is important, therefore, that  
9 you reach a verdict if you can do so conscientiously.

10          Nothing said in these instructions and nothing in  
11 the verdict form, prepared for your convenience, is meant to  
12 suggest or convey in any way or manner any intimation as to  
13 what verdict the Court thinks you should find. What the  
14 verdict shall be is your sole and exclusive duty and  
15 responsibility. Let your verdict speak the truth, whatever  
16 the truth may be.

17          If it becomes necessary during your deliberations  
18 to communicate with the Court, you may send a note through  
19 the bailiff, signed by your foreperson or by one or more  
20 members of the jury. No member of the jury should ever  
21 attempt to communicate with the Court by any means other  
22 than a signed writing, and the Court will never communicate  
23 with any member of the jury on any subject touching the  
24 merits of the case otherwise than in writing or orally here  
25 in open court.

1                  You will note from the oath about to be taken by  
2 the bailiff that he, too, as well as all other persons, are  
3 forbidden to communicate in any way or manner with any  
4 member of the jury on any subject touching the merits of the  
5 case.

6                  Bear in mind also that you are never to reveal to  
7 any person, not even to the Court, how the jury stands,  
8 numerically or otherwise, on the question of the defendant's  
9 guilt or innocence until after you have reached a unanimous  
10 verdict.

11                Upon retiring to your jury room, your first duty  
12 will be to select one of your number as foreperson who will  
13 preside over your deliberations, complete the verdict form  
14 with the answers you have agreed upon, and serve as your  
15 spokesperson here in court. His or her vote, however, is  
16 entitled to no greater weight than the vote of any other  
17 juror.

18                During your deliberations, you are not permitted  
19 to communicate about the case or your deliberations with  
20 anyone except your fellow jurors and then only in the jury  
21 room. This means you may not communicate with others either  
22 about the case or your deliberations by any means. This  
23 includes oral or written communication as well as any  
24 electronic means of communication, including a cell phone, a  
25 Smart Phone, computer, the Internet, blogs, websites, or

1 social network services such as Facebook, Facetime,  
2 LinkedIn, MySpace, Skype, Snapchat, YouTube, Twitter, or any  
3 other similar method of communication.

4 During the course of your deliberations, you  
5 should assume the attitude of judges of the facts rather  
6 than that of partisans or advocates. Your highest  
7 contribution to the administration of justice is to  
8 ascertain the true facts in this case and return a verdict  
9 accordingly.

10 When your deliberations are concluded and your  
11 answers inserted in the verdict form, the foreperson will  
12 sign and date the verdict, and all of you will return with  
13 your verdict here in open court.

14 Members of the jury, that concludes the Court's  
15 instructions, and I would now invite Mr. Shepherd to step  
16 forward and receive the oath.

17 COURT SECURITY OFFICER, SWORN

18 THE COURT: Members of the jury, momentarily I  
19 will excuse you to retire to the jury room to begin your  
20 deliberations; however, there is one additional matter that  
21 the Court needs to address. As you are aware, yesterday  
22 when we selected a jury in this case, we selected 13  
23 individuals. Fortunately all 13 of you have been present  
24 throughout the trial, but most regrettably, the Rules of  
25 Criminal Procedure in our federal courts and, indeed, in

1 most states, preclude more than 12 citizens participating in  
2 deliberations in any civil or criminal case. So at this  
3 time, I'm going to call upon Ms. Maternowski, who will  
4 present to Mr. Muresanu a box with all of your names in it,  
5 and he will randomly draw one of the jurors names, and the  
6 individual whose name is drawn will be designated the  
7 alternative and excused.

8 THE CLERK: Panel member No. 30, Anthony Le Donne.

9 THE COURT: Mr. Le Donne, on behalf of everyone  
10 associated with this case, it now falls upon the Court to  
11 excuse you. I have little doubt, after 31 years, that  
12 there's probably a little bit of frustration on your part  
13 about having fulfilled that most important of civic  
14 obligations but now being unable to participate with your  
15 fellow jurors in deliberations. But as you just heard the  
16 Court state, we only select alternates in the event that one  
17 of you could not participate throughout the trial.  
18 Fortunately, everyone was here, and given that only 12 can  
19 deliberate, I'm now going to excuse you.

20 Mr. Shepherd will escort you back to the jury  
21 room, and I would invite you to go around to the other side  
22 of our facility to Room 471, and my staff has certificates  
23 for you for your employer or for payment of your fees. So  
24 you need to pick those up before you leave the building.

25 In the meantime, until the jury completes its

1 deliberations, I would ask that you simply keep to yourself  
2 because in the unlikely event that one of the jurors is  
3 unable to complete his role or her role as part of the jury  
4 deliberations, it may become necessary for the Court to  
5 summon you back. So given that status, I would simply ask  
6 that you maintain your silence about the case and everyone  
7 who has anything to do with it, and Mr. Shepherd will get a  
8 number from you. And if it becomes necessary for the Court  
9 to contact you to return, we will. And at the same time,  
10 when the jury does return its verdict, we will also notify  
11 you, so however you would like to proceed. In some cases,  
12 jurors like to remain here in the courthouse to see how the  
13 case turns out. You're free to do that as well, but you  
14 can't discuss the case with anyone, including the Court  
15 staff or the lawyers or Mr. Shepherd. You're still viewed  
16 as a juror, but you can't deliberate.

17 With that understanding, Mr. Shepherd, I invite  
18 you to have Mr. Le Donne secure his personal belongings and  
19 go to the other side of our chambers to pick up his  
20 certificates.

21 Momentarily for the balance of the jurors, you  
22 will be directed to report to the jury room as soon as  
23 Mr. Le Donne leaves. And as you are aware, we've made  
24 arrangements for lunch for you. That should be here in a  
25 few minutes. And now that the case is going to be in your

1       hands, you are free, as I explained yesterday, to deliberate  
2       as long as you deem appropriate to arrive at a complete,  
3       fair, just, unanimous verdict.

4                 You will also be free to take your jury  
5       instructions with you as well as any notes that you took.  
6       And momentarily all of the paper exhibits and physical  
7       exhibits that have been received will be collected and  
8       similarly made available to you.

9                 If, during your deliberations, it becomes  
10      necessary for you, for whatever reason, to want to view the  
11      videotapes or listen to the audiotapes, you may simply  
12      advise the Court of that fact, and all of us will gather to  
13      have those materials re-played for you if it becomes  
14      necessary. So the Court staff and Mr. Muresanu and counsel  
15      will all be present should the jury wish to have any of  
16      those types of materials that were played on the screen made  
17      available for your consideration during your deliberations.

18                 All right. Members of the jury, I'm going to  
19      direct that you retire to your jury room.

20                 Mr. Shepherd will collect all of your cell phones  
21      and electronic communication devices. As I explained  
22      yesterday, he will maintain custody of them, and in the  
23      unlikely event any one of you received any form of emergency  
24      call or notification, he will alert you.

25                 The Court stands in recess directing that the jury

1 begin its deliberations.

2 (Jury not present.)

3 THE COURT: To the extent anybody wishes to make  
4 anything for the record, now is your opportunity.

5 Ms. Moreno-Taxman.

6 MS. MORENO-TAXMAN: Nothing, sir. Nothing,  
7 Your Honor.

8 THE COURT: Thank you.

9 Mr. Uller?

10 MR. ULLER: No, Your Honor.

11 THE COURT: Very well.

12 Given the hour, I would simply ask that counsel  
13 and Mr. Muresanu be available on 15 minutes' notice, again,  
14 at 2:00 this afternoon, meaning between now and 2:00.

15 Everyone is at liberty for lunch or other matters that you  
16 may have to attend to, but beginning at 2:00, you should be  
17 available on 15 minutes' notice.

18 Please provide Ms. Maternowski a number where she  
19 may reach you in the event the jury has a question or wishes  
20 to have any video material re-played or they have reached a  
21 verdict.

22 The Court stands in recess.

23 (Break.)

24 (Jury not present.)

25 THE COURT: Let the record reflect that we

1       reconvened in the matter of *United States of America vs.*  
2       *Ionel Muresanu.*

3                  The bailiff advised the Court that the jury has  
4       reached a verdict in the case.

5                  Everyone is present.

6                  Before the jurors come in the courtroom, does  
7       anyone wish to make anything of record?

8                  MS. MORENO-TAXMAN: Not on behalf of the  
9       United States, Your Honor.

10                 MR. ULLER: No, Your Honor. Thank you.

11                 THE COURT: Thank you.

12                 Mr. Shepherd, you may invite the jury in.

13                 (Jury present.)

14                 THE COURT: Good afternoon, members of the jury.

15                 Ms. Stearns, Mr. Shepherd has informed the Court  
16       that the jury has reached a verdict in the case; is that  
17       correct?

18                 FOREPERSON: That's correct.

19                 THE COURT: Very well. Would you tender your  
20       verdict to Mr. Shepherd, and he, in turn, will pass it up to  
21       the Court?

22                 Members of the jury, I'm now going to have  
23       Ms. Maternowski publish your verdict. As the verdict is  
24       read, I would ask that you listen very attentively because  
25       at the conclusion of the publication of your verdict, I will

1 ask you was this and is this your verdict as to each of the  
2 four counts, so say you one, so say you all.

3 If it is, please respond accordingly; if not,  
4 please tell me.

5 Ms. Maternowski, would you publish the jury's  
6 verdict?

7 THE CLERK: United States District Court, Eastern  
8 District of Wisconsin. *United States of America, Plaintiff,*  
9 *vs. Ionel Muresanu, Defendant*, Case No. 18-CR-129-JPS.

10 Verdict: We, the jury, duly impaneled and sworn, for our  
11 verdict in the above-entitled action, find the defendant,  
12 Ionel Muresanu, guilty of the offense charged in Count 1 of  
13 the indictment, possession of 15 or more access devices.

14 Guilty of the offense charged in Count 2 of the  
15 indictment, aggravated identity theft as to individual M.P.

16 Guilty as to the offense charged in Count 3 of the  
17 indictment, aggravated identity theft as to individual  
18 S.L.E.

19 Guilty of the offense charged in Count 4 of the  
20 indictment, aggravated identity theft as to individual  
21 E.L.B.

22 Dated at Milwaukee, Wisconsin, this 11<sup>th</sup> day of  
23 September, 2008, signed the foreperson, Kristin B. Sterns.

24 THE COURT: Members of the jury, having heard  
25 Ms. Maternowski publish your verdict, was this and is this

1 your verdict, so say you one, so say you all?

2 JURY: It is.

3 THE COURT: Thank you.

4 Ms. Moreno-Taxman, Ms. Kraft, does the Government  
5 wish to have the juror's polled?

6 MS. MORENO-TAXMAN: No, Your Honor.

7 THE COURT: Thank you.

8 Mr. Uller, on behalf of Mr. Muresanu, do you wish  
9 to have the jurors polled?

10 MR. ULLER: Yes, Your Honor.

11 THE COURT: Very well.

12 Ms. Maternowski, would you pole the jury?

13 THE CLERK: Ms. Linda Zukowski, panel member  
14 number 3, was this is and is this your verdict with regard  
15 to each of the questions that you were required to answer?

16 JUROR: It was.

17 THE CLERK: Ms. Linda Buteyn, panel member number  
18 7, was this and is this your verdict with regard to each of  
19 the questions that you were required to answer?

20 JUROR: Yes.

21 THE CLERK: Ms. Susan Horning, panel member number  
22 19, was this and is this your verdict with regard to each of  
23 the questions that you were required to answer?

24 JUROR: Yes.

25 THE CLERK: Kristin Blanchard Stearns, panel

1 member number 20, was this and is this your verdict with  
2 regard to each of the questions that you were required to  
3 answer?

4 JUROR: Yes.

5 THE CLERK: Grace Staudt, panel member number 18,  
6 was this and is this your verdict with regard to each of the  
7 questions that you were required to answer?

8 JUROR: Yes.

9 THE CLERK: Jennifer Sleight, panel member number  
10 16, was this and is this your verdict with regard to each of  
11 the questions that you were required to answer?

12 JUROR: Yes.

13 THE CLERK: Janine Davis, panel member number 33,  
14 was this and is this your verdict with regard to each of the  
15 questions that you were required to answer?

16 JUROR: Yes.

17 THE CLERK: Lisa Ungrodt, panel member number 11,  
18 was this and is this your verdict with regard to each of the  
19 questions that you were required to answer?

20 JUROR: Yes.

21 THE CLERK: Reyes Santos, panel member number 21,  
22 was this and is this your verdict with regard to each of the  
23 questions that you were required to answer?

24 JUROR: Yes.

25 THE CLERK: Elias Adams, panel member number 27,

1       was this and is this your verdict with regard to each of the  
2       questions that you were required to answer?

3                  JUROR: Yes.

4                  THE CLERK: Jacob Skrober, panel member number 25,  
5        was this and is this your verdict with regard to each of the  
6        questions that you were required to answer?

7                  JUROR: Yes.

8                  THE CLERK: Tracy Buczak, panel member number 32,  
9        was this and is this your verdict with regard to each of the  
10      questions that you were required to answer?

11                 JUROR: Yes.

12                 THE COURT: Thank you.

13                 Members of the jury, with the return of your  
14        verdict in this case, your work has now come to an end, and  
15        I'm certain that each of you will leave this experience with  
16        a much deeper appreciation and a renewed understanding of  
17        just how it is our third branch of government works.

18                 Obviously, we are all exposed to Hollywood  
19        productions or TV series that relate to legal-related  
20        matters both in the context of civil cases as well as  
21        criminal cases. But, obviously, you cannot compress in a  
22        half-hour segment or even a two-hour movie all of the  
23        interplay between the lawyers, the Court, your role as  
24        jurors, the witnesses, without first-hand experience of  
25        fulfilling that most important of civic obligations. And so

1 while to be sure a bit of inconvenience for each of you this  
2 week, as I explained to the panel who were excused  
3 yesterday, it is a very, very, very small price that each of  
4 us pay from time to time to have the benefit of the  
5 wonderful freedoms that we enjoy in these United States.

6 We have a rule of our Court that precludes any  
7 lawyer or agent for a lawyer or a party contacting you with  
8 regard to your service as a member of this jury. That rule  
9 does not preclude any one or more of you from initiating any  
10 contact whether with the Court or third parties or family or  
11 friends with regard to your experience as a member of this  
12 jury.

13 From the Court's perspective, even though I've  
14 been on the bench for over 31 years, we are always looking  
15 for new and better ways to accommodate citizen participation  
16 in the work of the Court. And so if there is anything about  
17 this experience that would lead you to suggest, "Judge  
18 Stadtmueller, there's a better way to deal with parking,"  
19 or, "There's a better way to deal with summoning jurors," as  
20 Ross Perot would say, Judge Stadtmueller is all ears. So  
21 don't hold back if you have some thoughts about this  
22 experience.

23 By the same token, the Court has a certificate for  
24 each of you in recognition of your service as well as a form  
25 for your respective employers to demonstrate where you had

1       been for the last couple of days.

2                   Momentarily, the Court will make those  
3                   certificates available in the jury room. I would ask that  
4                   you remain there for a bit, and as soon as we're ready to  
5                   present them, we will convene with you in the jury room.

6                   In the meantime, based upon the jury's verdict in  
7                   the case, the Court is now, on the record, constrained to  
8                   enter a judgment of conviction for each of the offenses  
9                   charged in the four-count indictment, and the Court will  
10                  commensurate with having entered a judgment of conviction,  
11                  direct that the probation department complete a presentence  
12                  report in Mr. Muresanu's case with a disclosure date of on  
13                  or before Thursday, November 1<sup>st</sup> of this year.

14                  If either the Defense or the Government have any  
15                  objection to any of the content of the presentence report,  
16                  those objections must be submitted directly to the probation  
17                  department not later than Thursday, November 15<sup>th</sup> of this  
18                  year.

19                  If there be objections, whether from the  
20                  Government or the Defense, opposing counsel will be granted  
21                  until Monday, November 26<sup>th</sup>, to file a response.

22                  Finally, the Court will schedule a formal  
23                  sentencing hearing for Mr. Muresanu for Thursday,  
24                  December 13<sup>th</sup> at 8:30.

25                  In the meantime, Mr. Uller, if you wish to renew

1       any of the motions that were made during the course of trial  
2       and wish to expand upon them, I would invite you to do so  
3       within 10 days of today's date. I will give the Government  
4       7 days to respond. And, Mr. Uller, following receipt of the  
5       Government's response, you will have 3 days to submit any  
6       reply.

7                     Are there any other matters we need to address  
8       before adjourning?

9                     MS. MORENO-TAXMAN: Judge, we would just ask to  
10      withdraw the actual cards from the evidence and just leave  
11      the copies and have them be taken into the possession of  
12      Agent Hoalcraft since they do have identifying information  
13      on them.

14                    MS. KRAFT: We would present a receipt to the  
15      Court similarly to the way we do with a firearm.

16                   THE COURT: All right. That request will be  
17      granted.

18                   MS. MORENO-TAXMAN: Thank you.

19                   THE COURT: Mr. Uller, anything further?

20                   MR. ULLER: No, Your Honor. Thank you.

21                   THE COURT: Very well. The Court stands  
22      adjourned.

23                   (Jury trial concluded.)

24

25

1 C E R T I F I C A T E  
2

3 I, Richard D. Ehrlich, a Registered Merit Reporter  
4 and Certified Realtime Reporter, certify that the foregoing  
5 is a true, complete, and accurate transcript of the  
6 proceedings ordered to be transcribed in the above-entitled  
7 case before the Honorable J.P. Stadtmauer, and jury, in  
8 Milwaukee, WI, on September 11, 2018.

9  
10 s/Richard D. Ehrlich September 21, 2018

11 

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Richard D. Ehrlich, Official Court Reporter

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